

# **BADavis ADR, LLC**

## **Mediation Rules and Guidelines**

Whenever the parties mutually agree to have their mediation administered by the Hon. Brian A. Davis (Ret.) d/b/a/ BADavis ADR, LLC (the “Mediator”), these Mediation Rules and Guidelines shall apply unless the parties and/or their counsel and the Mediator agree otherwise in writing.

### **1. Representation of Parties.**

A party may be represented at the mediation by one or more attorneys of his or her choice or by another authorized representative. A party also may represent him or herself if he or she desires to do so. No other person may attend the mediation without the express permission of the parties and the consent of the Mediator.

The full names and addresses of the parties and the parties’ expected representatives at the mediation shall be communicated in writing to all parties and to the Mediator at least fourteen (14) days prior to the commencement of the mediation.

### **2. Initiating the Mediation.**

Any party to a dispute may request the services of the Mediator by contacting the Mediator’s Case Administrator by telephone at 617-350-0950, ext. 115, or via email at [ADR@piercedavis.com](mailto:ADR@piercedavis.com). A party also may complete and submit an online ADR Services Inquiry Form (see link). The parties are encouraged to confer among themselves beforehand in order to confirm their joint interest in retaining the Mediator. If a mediation request is not submitted jointly on behalf of all of the parties to the dispute, the Case Administrator may defer acting on the request until the joint agreement of the parties has been obtained or may contact the other parties involved in the dispute and endeavor to obtain their agreement to mediate. The mediation will not commence unless and until all of the participating parties have executed and complied with a written Mediation Agreement (see link).

### **3. Impartiality and Disqualification of the Mediator.**

The Mediator shall have no personal or financial interest in the outcome of the parties’ dispute. Before accepting a mediation, the Mediator shall undertake a reasonable inquiry, based on the information supplied by the parties and/or their counsel, to determine whether there are any facts or circumstances that a reasonable person likely would regard as an actual or potential conflict of interest for the Mediator. At least ten (10) days prior to the commencement of the initial mediation session, the Mediator shall disclose to the parties any known facts or circumstances that a reasonable individual likely would regard as an actual or potential conflict of interest for the Mediator. In the event the Mediator discloses an actual or potential conflict of interest, any party shall have the right to cancel the mediation and all parties shall receive a full refund of any estimated professional fees and expenses that they have paid.

#### **4. Scheduling of the Mediation.**

The parties, their counsel, and the Mediator shall agree upon the time, date, manner, and location of the mediation. After the mediation has been confirmed, the Mediator will send the parties a written Pre-Mediation Notice and Schedule that will set out the specific procedures and deadlines that apply to the mediation, including the mediation date, the pre-mediation conference date and the deadline for submitting mediation statements.

Any request by a party or its counsel to cancel or reschedule a mediation session shall be submitted to the Mediator promptly after the basis for the request becomes known. In such circumstances, cancellation and/or rescheduling charges may apply in accordance with the terms of the Fee Schedule.

#### **5. Mediation Statements and Appendices.**

Each party shall submit to the Mediator in both hard-copy and PDF form a written mediation statement of no more than fifteen double-spaced pages containing: (a) the names and titles of all anticipated mediation participants; (b) a list of all pending disputes and all issues to be addressed in mediation; (c) a short description of the party's position with respect to each dispute and issue; (d) a candid evaluation of the relative strengths and weaknesses of the party's position with respect to each dispute and issue; and (e) a short chronology of the parties' settlement efforts to date, including a summary of the parties' most recent settlement demands and/or offers.

A party's mediation statement to the Mediator shall be accompanied by an appendix, in both hard-copy and PDF form, that contains complete, legible copies of: (a) any operative documents that form the basis for the parties' pending disputes, including any contract or agreement at issue; (b) any documents that are specifically referenced in the mediation statement; (c) any other important documents that the party wishes to bring to the attention of the Mediator; and (d) a complete copy of the current court docket sheet(s) for any pending litigation between the parties concerning the dispute(s) to be mediated.

Any party who wishes some or all of the contents of its mediation statement and/or appendix to remain confidential during the mediation shall clearly notify the Mediator of the same in the statement itself, and all such portions shall be treated as confidential by the Mediator.

The deadline for submitting mediation statements will be set forth in the Pre-Mediation Notice and Schedule. Unless otherwise instructed by the Mediator, each party shall overnight mail or hand-deliver hard copies of its mediation statement and accompanying appendix to the Mediator, on or before the submission deadline, at Pierce, Davis & Perritano, LLP, Ten Post Office Square – Suite 1100N, Boston, Massachusetts 02109. PDF copies of the mediation statement and accompanying appendix also may be sent via flash drive in conjunction with the hard-copy materials or via email to [ADR@piercedavis.com](mailto:ADR@piercedavis.com).

The parties shall have no obligation to share their mediation statements and/or appendices with any other party prior to the mediation, but they may do so if they wish. The parties are encouraged, however, to engage in a voluntary exchange of relevant documents and information in advance of the mediation in order to speed the mediation process and make it as productive as possible.

## **6. Pre-Mediation Conference.**

At the request of the parties or in the discretion of the Mediator, the Mediator may conduct a virtual pre-mediation conference. Topics to be addressed at the pre-mediation conference include, without limitation:

- Mediation logistics, including session scheduling, location, anticipated attendees, and whether anyone will participate virtually;
- The mediation format, including any particularized needs or requests;
- Mediation rules and procedures, including the requirement of confidentiality;
- The disputes and issues to be addressed at the mediation;
- The voluntary exchange of relevant documents among the parties and any other discovery needs.

## **7. Attendance at the Mediation.**

At least one person with full authority to resolve and settle the dispute will attend the mediation, either in person or virtually, on behalf of each party. If counsel is representing an insurance company or an insured, counsel shall ensure that a duly-authorized representative of the insurance company attends the mediation.

## **8. Conduct of the Mediation.**

Mediations are intended to be informal and non-adversarial. The parties and their counsel shall come to the mediation prepared to discuss all of the relevant issues with the Mediator and to work cooperatively to reach a mutually-acceptable resolution. The Mediator will conduct the mediation in a way that gives each party a reasonable opportunity to fairly present its position on the issues and that maximizes the ability of the parties to collectively resolve their dispute. In order to achieve these goals, the Mediator may conduct one or more private conferences with one or more of parties at any time, including prior to the formal mediation session. Such communications may be conducted by telephone, in writing, via email, in person, or by any other means. In the event a complete settlement of any issue(s) in dispute is not attained during the scheduled mediation session(s), the Mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a full settlement.

## **9. Confidentiality of Communications and Proceedings.**

In order to promote an open and productive dialogue at the mediation and help facilitate settlement of the parties' dispute(s), all written and oral communications made in the course of the mediation shall be confidential and shall not be subject to disclosure in any judicial, administrative, or private proceeding. Except as otherwise provided for in the Mediation Agreement, the entire mediation process, including all communications and written submissions created and/or supplied provided for this mediation, shall constitute settlement discussion and/or compromise negotiations and shall enjoy the maximum protection from discovery and disclosure possible under any applicable federal or state statute, rule, or common law provision, including, without limitation, Fed. Rule Evid. 408 and Massachusetts G.L. c. 233, § 23C.

## **10. No Stenographic Record or Recording of the Mediation.**

No part of the mediation shall be recorded either stenographically or by any other means.

## **11. Termination of the Mediation.**

The mediation shall terminate upon either: (a) the execution by the parties of a written settlement agreement; (b) the issuance of a written declaration by one or more the parties to the effect that the mediation is terminated; or (c) by written declaration of the Mediator to the effect that further efforts at mediation are not likely to be productive.

## **12. Interpreting and Applying These Rules and Guidelines.**

In the event that a disagreement arises concerning the proper interpretation and/or application of these Mediation Rules and Guidelines, the Mediator shall decide what constitutes their proper interpretation and/or application.

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