



Colorado Mediators & Arbitrators Mediation Rules of Procedure

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Introduction

Colorado Mediators & Arbitrators™ (COMA) provides timely dispute resolution that is affordable. The following procedures were written in simple language and organized in a way that can be easily referenced throughout the tenure of the case. Colorado Mediators & Arbitrators offers an accessible means of resolving disputes by embracing and promoting the traditional values of arbitration: affordability, expediency, and equity.

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Administrative Procedures

Rule S-1. Administrative Services

When parties agree to mediate or med-arbitrate utilizing these rules, they thereby authorize Colorado Mediators & Arbitrators to administer all services:

1. Receiving the initial submission agreement and responses from the parties
2. Addressing procedural questions and concerns
3. Appointing mediator or med-arbitrator: the med-arbitrator may address parties' procedural questions ex-parte
4. Disbursing the required med-arbitrator oath and disclosures to the parties
5. Scheduling mediation, med-arbitration, and facilities
6. Managing timeliness of fees; notifying all parties when fees have not been received
7. Delivering med-arbitration award to the parties and/or legal counsel
8. Retaining documentation submitted directly to COMA for one (1) year after the closing of med-arbitration when an award is delivered

Rule S-2. Agreement of the Parties

The parties shall be deemed to have made these rules a part of their med-arbitration agreement upon submission of their case for med-arbitration by the Colorado Mediators & Arbitrators. The rules in place at the time of the initial submission agreement shall govern.

Rule S-3. Limitation of Liability

Colorado Mediators & Arbitrators, its agents and any med-arbitrator or mediator assigned to a matter shall not be liable for any act or omission in connection with a case administered pursuant to these rules.

Rule S-4. Non-use of Legal Proceedings

No party shall, during the med-arbitration of any matter, prosecute or commence any suit, action, or proceeding against any other party touching upon any of the matters referred to pursuant to these rules.

Rule S-5. Fees

1. Colorado Mediators & Arbitrators demonstrates fairness and neutrality to the parties beginning with the administrative fees. COMA's administrative fees are evenly divided between the claimant and respondent.
2. Each party shall bear their own costs of preparing documentation, mailing or delivery fees, process service, photocopying, and printing prior to mediation or med-arbitration, and during each session.
3. Fee schedules appear in a supplement to these rules. *The Fee Agreement Terms and Conditions* are incorporated into the fee schedule upon filing the submission agreement or response.
4. If fees have not been paid in full according to the fee agreement terms and conditions, Colorado Mediators & Arbitrators may inform the parties in order that one of them may advance the required payment. If such payments are not made within 10 business days after notification, the case may be suspended or terminated.

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5. An additional filing fee shall not be charged if parties to a COMA-administered mediation request conversion to med-arbitration.
6. The Mediation Fee Schedule shall apply to Med-Arbitration.

Mediation Rules

Rule M-1. Purpose of Mediation

Mediation is a form of negotiation used for resolving disputes in a manner in which the parties themselves determine their outcome with the assistance of a mediator. The mediator is neutral, meaning he or she neither gains nor loses as a result of settlement or non-settlement in the matter. Additionally, mediators must disclose any personal bias that would impede in their ability to provide the parties with fairness and fair process.

Rule M-2. Voluntary Nature of Mediation

Neither Colorado Mediators & Arbitrators nor any mediator appointed to mediate a matter pursuant to these rules shall have any authority to compel a party to participate in mediation or to settle a matter.

Rule M-3. Matters Eligible for Mediation and Filing Process

Any matter may be submitted for mediation.

1. Mandatory Mediation

- a. Mediation initiated under a court order or contractual provision may be initiated by a claimant by filing a *Mediation Submission Agreement*, along with the necessary mediation initiation fee and serving a copy on the respondent via certified mail, email with return receipt request, or by process service. The respondent may respond within ten (10) days of service of the mediation submission agreement by filing a *Response to Mediation Filing* or by signing an agreement to mediate prepared by Colorado Mediators & Arbitrators.
- b. If no response is received or if the respondent declines mediation, COMA shall, when provided proof of service by the claimant to the respondent, provide the claimant with a *Letter of Non-Response* indicating the date the case was filed and any subsequent efforts taken to bring the matter to mediation. This letter may be presented to the court or an arbitrator to demonstrate claimant's compliance with the mediation requirement.

2. Voluntary Mediation

Mediation may be initiated voluntarily by signature of all parties on an agreement to mediate.

Rule M-4. Mediator Appointment and Role

A mediator is appointed by Colorado Mediators & Arbitrators upon receipt of a Mediation Submission Agreement.

The mediator shall decline appointment to a mediation case if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice. If at any time a mediator is unable to

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conduct mediation in an impartial manner, the mediator shall withdraw and Colorado Mediators & Arbitrators shall appoint a new mediator.

Rule M-5. Mediation Ground Rules

1. Any party may withdraw from mediation at any time. Applicable fees shall apply to cancellation.
2. The mediator shall act as a neutral and impartial negotiator throughout the process and shall not have any authority to determine issues, make decisions or otherwise impose a reward to resolve the matter. The mediator is not a legal representative of any party and has no fiduciary duty to any party.
3. Mediation may be conducted in person or by teleconference as determined by the mediator or by mutual agreement of the parties. The mediator shall negotiate between the parties utilizing joint sessions, caucus, electronic communications and other means, with the goal of assisting the parties in reaching their own resolution of the matter. The mediator shall direct the negotiation process. The parties and their representatives agree to cooperate with the mediator in ensuring that the mediation is conducted expeditiously, to make all reasonable efforts to be available for mediation sessions, and to be represented at all scheduled mediation sessions either in person or through a person with authority to settle the matter.
4. Caucus: The mediator may meet with and communicate separately with each party or his/her representative. The mediator may notify the other parties of separate meetings or other communications and offer to give the same time and consideration to the other parties to maintain equidistance.
5. The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation and may engage in direct settlement discussions and negotiations without the presence of the mediator.
6. Mediation is confidential. A written, audio, video or visual record of mediation shall not be made. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration. The fact that mediation has occurred shall not be considered confidential. The executed Memorandum of Understanding may be submitted to a court of competent jurisdiction for enforcement.

Rule M-6. Memorandum of Understanding (MOU)

A primary goal of parties to mediation is to reach agreement on disputed matters and to reduce the terms and conditions of such agreements to a written document which is signed by the parties and suitable to file with a court of competent jurisdiction for final orders and/or enforcement, when necessary. Mediation may result in parties coming to partial agreements, relying upon the jurisdiction of the court for outstanding issues. Agreement is not guaranteed in mediation.

1. Mediator-drafted MOU

When parties attend mediation *pro se* or when the parties do not jointly agree that an attending attorney draft the MOU, the mediator acts as a scribe for the parties to reduce specific agreements achieved in mediation to writing. The parties shall be present, either in person or via teleconference, during the drafting of the terms and conditions of the agreement. The quality and completeness of such agreements is the responsibility of the parties prior to executing the agreement through signing the document.

2. Attorney-drafted MOU

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If a party is represented by legal counsel in mediation, the drafting of the terms and conditions of the agreement achieved in mediation may be undertaken by the attending attorney only with the consent of all of the parties. If the parties do not agree that the legal counsel should draft the MOU, the mediator shall work with the parties to put the agreement in writing.

Rule M-7. Legal Review of MOU for *Pro Se* Parties

Pro se parties are encouraged to include a legal review provision in the MOU which includes:

1. The parties attended mediation pro se
 2. The signed agreement is subject to the parties' respective attorney's review
 3. If a party's attorney states that a provision or provisions are contrary to legal advice, such objections shall be fully supported by the written and signed statement of the attorney, showing good cause for such objection, and sent to the other party and the mediator with proof of delivery or proof of attempted delivery
 4. Only the specific provisions that are objectionable shall be renegotiated in mediation with the same mediator within a specified timeframe, leaving all other provisions in full force and effect.
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