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# NASSAU COUNTY BAR ASSOCIATION

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## *MEDIATION RULES OF THE NASSAU COUNTY BAR ASSOCIATION MEDIATION AND ARBITRATION PANELS*

### **The Mediation and Arbitration Panels**

The Nassau County Bar Association (the "Association") has established the Nassau County Bar Association Mediation and Arbitration Panels (the "Panels") comprised of qualified members of the Association who are available to State, Federal, and local courts, litigants, parties to contracts, and the general public to mediate a dispute. The Panels' Administrator (the "Administrator") will, upon request, provide a neutral Mediator (the "Mediator") to assist in the resolution of a dispute. The Mediator shall be selected from a list of attorneys admitted to practice law in the State of New York for a minimum of ten (10) years, each of whom has met certification requirements of the Advisory Council (hereinafter defined) and been screened by the Judiciary Committee of the Association to serve on the Mediation Panel (the "Panel") as a Mediator. Requests for Mediation by the Association's Mediation Panel shall be on a form provided by the Association or the equivalent.

#### **MED-1      Certain Terms:**

**(a) "Advisory Council"** The Program shall be supervised by the Mediation and Arbitration Panels Advisory Council (the "Advisory Council"), whose members shall manage and direct all procedural and substantive matters brought before the Mediation Panel including, without limitation, the setting of policy, rule review and amendment, case management (requiring discretionary review and response), and the performance of such other duties and functions as may be necessary or appropriate in the execution of its supervisory duties. The Advisory Council shall consist of the Chair and seven (7) additional members, each of whom shall be a member of the Association's Alternative Dispute Resolution Committee (the "ADR Committee") and a member of either or both of the Panels. In addition, the then current Chair(s) and Vice-Chair(s) of the Alternative Dispute Resolution Committee and the Executive Director of the Association shall serve

ex officio. Members of the Advisory Council shall be selected by the ADR Committee Chair(s) and shall serve two-year terms, the first day of which shall be January 1 of the year of their selection and the last day of which shall be December 31 of the second year of their term. Initially, four members of the Advisory Council shall serve a three-year term and the remaining members of the Advisory Council shall serve two-year terms. The Advisory Council Chair shall be selected annually by the members of the Advisory Council and shall serve in said position for a one-year term, the first day of which shall be January 1 of the year of the Chair's selection and the last day of which shall be December 31 of that year.

**(b) "Mediation"** Mediation is a voluntary, private process that affords Parties an expeditious, time-saving and cost effective means of resolving disputes that might otherwise be arbitrated or litigated in the courts. Negotiations are facilitated by a neutral, impartial third-party Mediator who assists the parties in reaching a mutually agreeable resolution of their dispute.

**(c) "Mediator"** The Mediator is neutral and impartial. Although the person selected as a Mediator may be a member of the Association and a practicing attorney, no attorney-client privilege attaches to the communications between the Parties and the Mediator. The Mediator does not serve as an attorney or advocate for any Party.

**(d) "Party" or "Parties"** Each of the Parties and their respective counsel, if any, in a representative capacity, may be referred to in these Rules as a "Party" or "Parties," as the case may be.

**(e) "Program"** The Mediation Program ("Program") is administered by the Administrator who maintains a current list of Mediators. The Administrator will notify counsel for the Parties, or in the absence of counsel, the Party or Parties directly, of the identity of the Mediator and will carry out such other functions as are required under these Rules.

**(f) "Rules"** The Mediation rules set forth herein are hereinafter referred to as the "Rules," or these "Rules."

**MED-2 Consent to Association Rules:**

By submitting any case to Mediation before the Mediation Panel, the Parties are deemed to have consented and agreed to these Rules for the conduct of the Mediation.

**MED-3 Mediation Fees and Expenses:**

All administrative and other fees established by the Association, if any, and all Mediator compensation and reimbursable expenses, shall be paid by the Parties in equal shares

unless agreed otherwise by them. Travel expenses of the Mediator within the County of Nassau, including but not limited to, mileage and parking costs, shall not be reimbursable.

**MED-4 Matters for Submission:**

The scope of matters, cases, disputes, claims and issues which may be submitted to mediation is broad. Subject to any requirements of law, Mediation under these Rules may be used for any matters that (a) are in litigation in any court, (b) required by statute, rule, regulation or court order to be submitted to Mediation, (c) are required by agreement to be mediated prior to taking any other legal steps, or (d) are the subject of negotiations which may benefit from the assistance of a Mediator.

**MED-5 Request for Mediation:**

The Parties may submit a matter for Mediation by signing and submitting to the Administrator a Request for Mediation form which shall contain the name of the Parties, a brief statement of the matter to be mediated, and if the Mediation is to be conducted pursuant to a written agreement between the Parties, a copy of the agreement.

**MED-6 Selection of Mediator:**

(a) Upon receipt of a Request for Mediation, the Administrator shall provide the Parties, by electronic (e-mail) or first class mail, with a list of five (5) names from which to select the Mediator. Preferences for a Mediator having subject matter expertise may be requested and will be considered, subject to availability. Subject to the foregoing, proposed Mediators shall be taken in rotation from the panel of Mediators maintained by the Administrator. The list of Mediators shall be accompanied by such biographical information concerning each of the Mediators as shall, from time to time, be on file with the Association. Within seven (7) business days after receipt of the list, the Parties (or their counsel) may confer to select a mutually acceptable Mediator or, in the absence of agreement on a Mediator, each side to the dispute shall then return to the Administrator, within ten (10) business days after receipt of the list of Mediators, a separate list of Mediators, identifying by ranking the Party's preference for a Mediator by number (with number 1 being the first choice, number 2 being the second choice, and so on) their respective preferences for the Mediator. The Administrator shall compare the Parties' rankings and identify the Mediator. In determining the Mediator, the lowest numerical combined rankings shall be used; provided, however, that where there are multiple Parties on either or any side of the dispute who cannot agree upon a single ranking sheet between or among them, each shall submit their own rankings and the same shall be submitted by the Administrator to the Advisory Council which shall thereupon determine who shall serve as the Mediator.

(b) If, for any reason, the Administrator is unable to identify the Mediator from the initial list of proposed Mediators, a second list of five (5) names of Mediators shall be forwarded to the Parties or their counsel, which names have not previously been submitted to the Parties. The Parties and the Administrator shall thereupon follow the same procedure as set forth above with respect to identifying the Mediator.

(c) If the Administrator is unable to identify the Mediator from the second list of proposed Mediators, then the Advisory Council shall select from the list of Mediators a Mediator whose name was not previously submitted to the Parties.

(d) Notwithstanding the foregoing, the Parties may select whom, from the Panel, they wish to have serve as Mediator in their case.

(e) If, after appointment to act, the Mediator is unable to perform his/her duties, the Administrator shall declare a vacancy in the appointment, and unless the Parties otherwise agree, appoint another Mediator.

(f) Any challenge to, or request for disqualification of, the Mediator who has been appointed shall be filed with the Administrator, with notice to the other Party(ies) within five

(5) business days of (i) the objectant's receipt of the Administrator's notice of appointment, or (ii) receipt of the Mediator's disclosures pursuant to Rule MED-7. In addition to any objection made under Rule MED-7(c), any other challenges or requests for disqualification shall be made only for cause. The Administrator shall forward all challenges or requests for disqualification to the Advisory Council upon receipt. The Advisory Council shall, with reasonable promptness, determine whether the Mediator shall continue to serve, and the determination shall be final and binding.

**MED-7 Disclosures:**

(a) It is the obligation of any prospective or appointed Mediator to take appropriate steps to avoid the appearance of any conflicts of interest. In furtherance of that obligation, the Mediator shall promptly disclose to the Administrator if s/he has any current or prior direct or indirect personal, professional or financial interest in or relationship with the matter to be submitted to Mediation and/or any of the Parties, their attorneys or any material participant in the Mediation. The duty of the prospective or appointed Mediator to disclose hereunder shall be a continuing obligation throughout the entire Mediation process.

(b) Any Party or attorney involved in the Mediation shall promptly disclose to the Administrator any current or prior direct or indirect personal, professional or financial relationship with a prospective or appointed Mediator. The duty of the Party or attorney to disclose hereunder shall be a continuing obligation throughout the entire Mediation process.

(c) The Administrator shall forward all such disclosures to the Parties, who shall have a period of five (5) business days to file with the Administrator any objection in writing to the service of the Mediator, specifying the reasons for the objection. If any Party files an objection to the Mediator, the matter shall be submitted to the Advisory Council for determination as to whether the Mediator shall continue to serve, and such determination of the Advisory Council shall be final and binding.

**MED-8 Waiver:**

(a) Any Party or attorney who proceeds with the Mediation with actual or constructive knowledge that any provision or requirement of these Rules has not been complied with, and who fails to promptly file an objection in writing with the Administrator, shall be deemed to have waived the right to object.

(b) In requesting Mediation, the Parties agree and acknowledge that the Mediator shall not be made a party or witness in any subsequent meditation, arbitration, or judicial proceeding arising from, or related to, the dispute submitted for Mediation.

**MED-9 Non-Liability:**

Neither the Association, the Administrator, members of the Advisory Council, nor the Mediator shall be liable to any Party or Parties to the Mediation for any act, omission or conduct in connection with any Mediation.

**MED-10 Immunity:**

The Mediator, the Association and its directors, officers, committees and employees, and the Advisory Council and its members, shall be immune from suit or other legal process, and none shall be made a party or witness in any arbitration or judicial proceeding arising from, or related to, the dispute submitted to Mediation under these Rules. The Parties shall be deemed to have agreed that none of the foregoing persons is competent to testify as a witness in any court action, suit or proceeding, and no Party shall subpoena any of the foregoing persons or seek to compel any of them to testify in any action, suit or proceeding.

**MED-11 Pre-Session Conferences:**

After the Mediator has received notice of the case assignment, the Mediator, in consultation with the Parties and/or their counsel, shall fix a date and time for a joint conference or separate conferences with counsel and/or the Parties, via telephone or inperson, in advance of the initial Mediation session.

**MED-12 Mediation Statements:**

(a) Unless otherwise agreed among the Parties and the Mediator, at least ten (10) days before the first scheduled mediation session, each party shall prepare and deliver to the Mediator, either *ex parte* or as the Parties may otherwise agree, a written statement presenting in concise form:

- (i) the Party's contentions as to key facts, legal issues, liability and damages, and any other information that will advance settlement prospects or make the mediation more productive;
- (ii) the status of any settlement negotiations;
- (iii) the names of the persons, in addition to counsel, with full authority to resolve the matter who will attend the Mediation; and
- (iv) any other material or information as may be requested by the Mediator.

(b) If the Parties elect to exchange their mediation statements, the parties may submit to the Mediator, an *ex parte* separate written statement setting forth such confidential information, for the Mediator's eyes only, which the Party may wish the Mediator to have, including, but not limited to, the Party's reasonable settlement range, including any non-monetary proposals for settlement of the matter, and any other information the Party deems appropriate for disclosure to the Mediator.

(c) All mediation statements shall be subject to the confidentiality of the Mediation process and treated as documents prepared "for settlement purposes only."

**MED-13 Confidentiality of Mediation:**

Information disclosed to, and documents received by, the Mediator shall be confidential, and not subject to disclosure by the Mediator in any forum, except if directed by judicial decree or requirement of law. If requested by the Mediator, the Parties to the Mediation shall label all documents and exhibits submitted to the Mediator or presented for identification during the Mediation as "confidential." Unless otherwise agreed to by the Parties, all documents, proposals, discussions and/or admissions disclosed during the Mediation shall remain confidential by the attending Parties. There will be no stenographic, audio, or other verbatim record made during any portion of the Mediation. At the discretion of the Mediator, the Mediator may destroy his/her files, including notes, after the last session of the Mediation is held.

**MED-14 Parties' Obligations:**

- (a) All Parties shall cooperate with the Mediator, and with each other.
- (b) Parties or their representatives who appear at the Mediation must have knowledge and understanding of the issues.
- (c) Either the Party or the Party's representative, or both, who appear at the Mediation shall have full authority to settle the matter.

**MED-15 Role of the Mediator:**

The Mediator shall assist the Parties to the Mediation by attempting to satisfactorily resolve the dispute. In assisting the Parties, the Mediator may:

- (a) meet and/or speak separately and/or jointly with the Parties;
- (b) obtain expert advice with the consent of the Parties;
- (c) when appropriate, recommend settlement; and/or
- (d) terminate the Mediation.

**MED-16 Termination:**

The Mediation shall terminate when there is a settlement agreed to by the Parties, or if there is a declaration by the Mediator or a Party that the Mediation is terminated.

**MED-17 Costs/Fees:**

- (a) At the time the Request for Mediation is submitted to the Association, the submitting Party or Parties shall pay, in accordance with the Association's then applicable Schedule of Mediation Fees: (i) the Association's administrative fee; and (ii) a required deposit toward the Mediator's compensation and reimbursable expenses (the "Mediator's Deposit"). The administrative fee shall be non-refundable. If the Parties have paid an administrative fee or fees for an Arbitration, no additional filing fee shall be required for the Mediation of that case.
- (b) All charges and expenses shall be borne equally by the Parties, or as they otherwise agree, and are payable upon receipt of an invoice. The Mediator shall arrange for the collection of his/her additional fees and expenses directly from the Parties. The Mediator's rate shall be the rate provided for in the Association's Schedule of Mediation Fees as in effect at the time of filing the Request for Mediation, which rate shall apply to all time spent on the matter by the Mediator

including, but not limited to, pre-mediation conferences, study time, communication with the Parties and/or counsel review of documents, and assisting with the drafting of a settlement agreement. The Mediator Deposit shall be applied against the first six (6) hours expended by the Mediator. Unearned Mediator Deposits shall be refunded.

**MED-18 Rules:**

Any questions, concerns or disputes raised by any Mediation participant, regarding the application or interpretation of these rules, and/or any amendments thereto, shall be resolved by the Advisory Council, whose decision shall be final and binding.

**MED-19 Headings:**

The headings used in these Rules are made for convenience, are used for general reference purposes only, and shall not be construed to describe, define or limit the scope of, or otherwise affect, the interpretation or meaning of these Rules or any of their provisions.

(Adopted January 12, 2016)

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## SCHEDULE OF MEDIATION FEES

Administrative Filing Fee for filing Demand for Mediation.....	\$500.00
Advance deposit for Mediator's fees and reimbursable expenses.....	\$1,800.00 <sup>1</sup>
Cancellation Fee.....	\$900.00
Room rental fee: Contact Nassau County Bar Association for availability and rates.	

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<sup>1</sup> Each Mediator shall be compensated at the rate of \$300.00 per hour