

WAMS Mediation Rules and Procedures

Mediation is a settlement effort that utilizes the services of an impartial, third-party mediator in an effort to reach a mutually acceptable agreement. By agreeing to mediate, parties agree to negotiate to settle their differences. Neither WAMS nor the mediator has the power or authority to render a binding decision or force the parties to accept a settlement. Whenever parties choose to mediate through Washington Arbitration & Mediation Service (WAMS), the following Mediation Rules and Procedures apply to the proceedings:

1. **Initiating the mediation process.** To begin the mediation process, either party should contact WAMS by phone, email or letter. WAMS will then contact all parties about the mediation, even if it has already been agreed to by all parties.
2. **Mediator Appointment.** Once the parties agree to mediate, WAMS will help select a mediator as needed. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, a conflicts check will be conducted and the prospective mediator shall disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings. In the event any party thereafter objects to such mediator, a new mediator will be selected. Parties recognize that mediators are independent contractors and not agents or employees of WAMS.
3. **Scheduling.** Upon appointment, WAMS will work with the parties to establish the time and location of each mediation session. In the case of court-ordered mediation or other referrals involving limited scheduling options, parties will be provided with a list of available hearing dates and/or available mediators, as appropriate. Requested mediation dates may be tentatively reserved without incurring any administrative charges, subject to calendar availability.
4. **Good Faith Participation.** Whenever parties mediate with WAMS, either voluntarily or pursuant to court order, they agree to mediate in accordance with the WAMS Mediation Rules and Procedures. These rules may be altered by agreement of the parties and prior notice to WAMS. By agreeing to mediate, parties are agreeing to negotiate in an attempt to settle their differences in good faith.
5. **Conduct of Mediation Sessions.** All sides in a dispute are expected to be represented at the mediation session. Absent prior agreement, the plaintiff(s) will be in attendance, as will anyone with settlement authority. At the mediation session, the parties will be prepared to discuss the dispute and how it might be resolved. Such discussions may include reference to relevant documents or a description of witnesses or other evidence. For most cases, it is helpful to the mediator to receive written materials or information in advance of the mediation session. At the mediation session(s), the mediator will conduct an orderly settlement negotiation process, with separate private meetings (caucuses) held with each party to improve the mediator's understanding of the positions of the parties and allow for confidential discussions about the merits of each side's position.
6. **Privilege against Disclosure.** The parties recognize that mediation is a process involving settlement negotiations, and that all offers, promises, conduct and statements, whether written or oral, made in the course of the process, are not subject to discovery or admissible as evidence in any litigation or arbitration of their dispute, to the extent allowed by applicable law. The parties agree to not subpoena or otherwise require the mediator or WAMS administrators to testify or produce records, notes or work product in any future proceedings, and no recording or stenographic record will be made of the mediation session. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation session. In the event the parties do reach a settlement agreement, that settlement agreement will be admissible in court or arbitration proceedings to enforce it,

unless the parties agree otherwise. Any information disclosed to the mediator in a private caucus shall remain confidential unless the party agrees that it may be disclosed.

7. **Discovery.** If one or more of the parties has a substantial need for discovery in order to prepare for the mediation session, the parties shall attempt to agree on a plan for such necessary discovery. Should they fail to reach an agreement, the parties may present the matter to the mediator(s) for a non-binding recommendation.
8. **Not Legal Counsel or Expert.** All parties recognize that at the mediation session(s) and at every other point of the proceedings:
 - neither WAMS nor the mediator will be acting as a legal adviser or representative for any party;
 - neither WAMS nor the mediator has a duty to assert, analyze or protect any party's legal rights or obligations, including lien rights, statutes of limitation, or any other time limit or claim requirement;
 - neither WAMS nor the mediator has a duty to make an independent expert analysis of the situation, raise issues not raised by the parties or determine that additional necessary parties should participate in the mediation;
 - neither WAMS nor any mediator can guarantee that a mediation session will result in a settlement. Parties may be represented by an attorney at any stage of the mediation process, and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements. WAMS may require that a party be represented by an attorney as a condition of participation.
9. **Termination of Mediation.** The mediation shall be terminated in any of the following circumstances: by the execution of a settlement agreement by the parties, by a declaration by the mediator to the effect that, in the judgment of the mediator, further efforts at mediation are no longer worthwhile; or by a declaration by any party that the mediation effort is terminated.
10. **Payment of Fees.** WAMS charges fees for its services which are set forth in a Mediation Fee Schedule. There must be a clear fee agreement on file at WAMS prior to the start of any mediation session.
11. **Fee Responsibility.** In accordance with professional custom and Washington law, attorneys are responsible for payment of any mediation fees incurred on behalf of their clients. Mediation services are not provided on a contingent fee basis; therefore mediation fees are due and payable when requested as a pre-hearing deposit or within 45 days of receipt of an invoice from WAMS. There is no relationship between the outcome of a mediation session and an attorney or claims representative's obligation to pay his or her share of the mediation costs incurred. The WAMS Mediation Fee Schedule and associated policies govern all mediation case referrals to WAMS-affiliated mediators.
12. **Authority of Mediation Administrator.** The mediation administrator at WAMS has the authority to resolve any issues not addressed by these rules and to take any action deemed necessary in conjunction with the mediation process.
13. **Status of WAMS.** WAMS, its administrators and mediators are entitled to qualified good faith immunity from suit arising from their involvement in any case referred to WAMS for mediation. Neither WAMS, its administrators nor mediators are necessary parties in any proceeding to enforce any settlement agreement. The parties recognize that WAMS offices are privately owned and operated and that WAMS mediators have no equity interest in WAMS.
14. **Amendment of Rules.** These rules may be amended or modified by WAMS at any time without notice.