

## Financial Planning Disputes Commercial Mediation RULES

Administered by the American Arbitration Association

*Amended and Effective July 1, 2003*

In other fields, such as the medical and insurance professions, mediation has been shown to be of great benefit to consumers by providing an effective, efficient and inexpensive alternative to litigation. With this goal in mind, the Certified Financial Planner Board of Standards in 1993 convened a task force comprised of members of the leading financial planning membership organizations—the Institute of Certified Financial Planners and the International Association for Financial Planning (now merged to form the Financial Planning Association) and the National Association of Personal Financial Advisors—to evaluate the benefit and viability of a mediation program for the growing financial planning profession.

Working closely with the American Arbitration Association (AAA), the coalition of financial planning organizations determined that a mediation program would not only be viable for all financial planning professionals and their clients, but that it would also greatly benefit the consumer by: offering an alternative to time consuming, expensive litigation, and giving disputing parties a chance to work out their own solutions in private with the help of an impartial, expert mediator.

### Dispute Resolution through the American Arbitration Association

Founded in 1926 as a private, not-for-profit organization, the American Arbitration Association remains dedicated to establishing and maintaining fair and impartial procedures of dispute resolution as an effective alternative to the courts. Over the years, the AAA's reputation for efficient, inexpensive, and neutral administration of the dispute resolution process has spread worldwide.

Along with arbitration, the AAA has developed and promoted other dispute resolution mechanisms, including mediation. Cases submitted under the Commercial and Construction Industry Mediation Rules have had a settlement rate of over 80% and thousands of insurance claims have been successfully mediated under the AAA's Dispute Resolution Procedures for Insurance Claims.

No doubt, you have heard about mediation before, but how does it differ from arbitration? Is the process the same as arbitration? Are the words "arbitration" and "mediation" interchangeable? Are the results the same? The answers to all of these questions, and others, can be found in this brochure.

### What is mediation?

Mediation is a process by which parties submit their dispute to a third-party neutral (the mediator) who works with them to reach a settlement of their dispute. Mediation is an extension of the negotiating process. Submitting your dispute to AAA mediation will not cause delay to any pending lawsuit or arbitration you may have. Mediators who serve on the AAA's panel are

experts in successful negotiation. Mediators receive a fee from the parties for their services. They are also rewarded by knowing that their efforts have resulted in an amicable settlement of a dispute that would have cost substantial time and money had it been litigated.

## Resolving Business Disputes

Business disputes may now be submitted to a special program of alternatives to litigation.

### How the Program Works

Any party to an existing business dispute may ask the AAA to ascertain whether the other party or parties are willing to submit the dispute to alternative dispute resolution (ADR). Cases that are new or pending litigation are eligible.

An AAA representative will explain the various dispute-resolution techniques and assist the parties in choosing one that meets their needs. Once the AAA has the parties' agreement to submit a dispute to alternative resolution, it will administer the case under its applicable rules or procedures.

Beyond mediation, ADR might take the form of arbitration, minitrial, or any variation of these procedures on which the parties agree.

*Arbitration* is a process in which each side presents its case at a hearing to a neutral for a final and binding decision.

*Minitrial* is a structured settlement procedure in which attorneys present their best case in an abbreviated form with experts, if appropriate, before senior executives of the companies involved and a neutral who chairs the presentation. After the presentation, the senior executives meet for a settlement discussion. In the event that the senior executives are unable to settle the dispute, the neutral may be empowered to mediate and/or provide a nonbinding advisory opinion regarding the likely outcome if the case were litigated.

*Advisory arbitration* in most respects mirrors traditional arbitration. It differs, however, in focusing on specific issues in a dispute and deciding them in an award that is not binding on the parties.

Other ADR methods include factfinding, investigation of a dispute by a neutral who issues findings and a nonbinding report, and med-arb, which combines the two primary processes.

### The Neutrals

Mediators and arbitrators selected for this program are qualified, experienced neutrals with an understanding of current legal and business practices. The parties select the neutral best qualified to hear their controversy.

### Cost

The administrative fees of the AAA and the compensation arrangements for the neutral are set

forth in the particular dispute resolution agreed on. Pamphlets containing the various procedures are available through any AAA regional office.

## Filing

A party may list a case with the AAA and request that the AAA invite the other party to join in a submission to arbitration, mediation, or another form of dispute resolution. The AAA will, upon request, provide a form to do so. It is sufficient, however, to provide the information outlined below in a letter or by telephone. Upon receipt of this information, the AAA will contact the other party or parties to the dispute.

A party listing a case under the program must provide the AAA with the following:

- names of the parties to the case, including any court docket number;
- the ADR procedure requested-e.g., arbitration, mediation, or factfinding;
- the nature and the amount of the claim (a brief statement of the claim and the response of the other party or parties);
- desired qualifications of the neutral, if any;
- the preferred place of hearing; and
- addresses and telephone numbers of all parties, including counsel, if any.

## Further Information

For further information, contact the nearest AAA office.

### Commercial Mediation Rules for Financial Planning Disputes

#### 1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association (AAA) or under these rules, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.

#### 2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation by filing with the AAA a submission to mediation or a written request for mediation pursuant to these rules, together with the \$325 nonrefundable case set-up fee. Where there is no submission to mediation or contract providing for mediation, a party may request the AAA to invite another party to join in a submission to mediation. Upon receipt of such a request, the AAA will contact the other parties involved in the dispute and attempt to obtain a submission to mediation.

#### 3. Requests for Mediation

A request for mediation shall contain a brief statement of the nature of the dispute and the

names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall simultaneously file two copies of the request with the AAA and one copy with every other party to the dispute.

#### **4. Appointment of the Mediator**

Upon receipt of a request for mediation, the AAA will appoint a qualified mediator to serve. Normally, a single mediator will be appointed unless the parties agree otherwise or the AAA determines otherwise. If the agreement of the parties names a mediator or specifies a method of appointing a mediator, that designation or method shall be followed.

#### **5. Qualifications of the Mediator**

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, except by the written consent of all parties. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the AAA shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the AAA will appoint another mediator. The AAA is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

#### **6. Vacancies**

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise.

#### **7. Representation**

Any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

#### **8. Date, Time, and Place of Mediation**

The mediator shall fix the date and the time of each mediation session. The mediation shall be held at the appropriate regional office of the AAA, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

#### **9. Identification of Matters in Dispute**

At least ten days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented.

The mediator may require any party to supplement such information.

#### 10. Authority of the Mediator

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

#### 11. Privacy

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

#### 12. Confidentiality

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding

- (a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (b) admissions made by another party in the course of the mediation proceedings;
- (c) proposals made or views expressed by the mediator; or
- (d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

#### 13. No Stenographic Record

There shall be no stenographic record of the mediation process.

#### 14. Termination of Mediation

The mediation shall be terminated

- (a) by the execution of a settlement agreement by the parties;
- (b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- (c) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

## 15. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation.

Neither the AAA nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

## 16. Interpretation and Application of Rules

The mediator shall interpret and apply these rules insofar as they relate to the mediator's duties and responsibilities. All other rules shall be interpreted and applied by the AAA.

## 17. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator and representatives of the AAA, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

## ADMINISTRATIVE FEES

The nonrefundable case set-up fee is \$325 per party. In addition, the parties are responsible for compensating the mediator at his or her published rate, for conference and study time (hourly or per diem).

All expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before the commencement of the mediation, the AAA shall estimate anticipated total expenses. Each party shall pay its portion of that amount as per the agreed upon arrangement. When the mediation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties.

## Notes

Rules, forms, procedures and guides are subject to periodic change and updating.

The Certified Financial Planner Board of Standards (CFP Board)  
1700 Broadway, Suite 2100  
Denver, CO 80290-2101

The Certified Financial Planner Board of Standards (CFP Board) is a nonprofit professional regulatory organization founded in 1985 to benefit the public by fostering professional standards in personal financial planning. An independent certifying organization, the CFP Board owns the CFP certification mark and the marks CFP. and Certified Financial Planner..

The Financial Planning Association (FPA)  
3801 East Florida Avenue, Suite 708  
Denver, CO 80210

The Financial Planning Association (FPA) is a membership organization of 28,000 financial services professionals and firms dedicated to supporting the financial planning process to help people achieve their goals. FPA was created when the Institute of Certified Financial Planners (ICFP) and the International Association for Financial Planning (IAFP) unified on January 1, 2000. FPA believes that individuals seeking the advice of a financial planner should look for a CFP licensee.

National Association of Personal Financial Advisors (NAPFA)  
355 West Dundee Road, Suite 107  
Buffalo Grove, IL 60089

The National Association of Personal Financial Advisors (NAPFA) is a nonprofit professional association of comprehensive financial planners who work on a fee-for-service (fee-only) basis. NAPFA's members receive no commissions or other economic benefit, other than client fees, from their client's implementation of their recommendations.

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