



**MARITIME ARBITRATION ASSOCIATION  
OF THE UNITED STATES**

---

***MEDIATION RULES***

---

***Revised July 2007***

**MARITIME ARBITRATION ASSOCIATION  
OF THE UNITED STATES**

*MEDIATION RULES*

<b><u>RULE</u></b>	<b><u>PAGE</u></b>
1	Definitions.....3
2	Applicability of rules.....3
3	Administration of mediation.....4
4	Initiation of mediation proceedings.....4
5	Appointment of mediators.....4
6	Impartiality, disclosure and challenge.....5
7	Party representatives.....6
8	Preliminary conferences.....6
9	Exchange of information.....6
10	Date, time and place of mediation.....7
11	Conduct of mediation.....7
12	Confidentiality.....9
13	Exclusions and limitations.....10
14	Costs of mediation.....11
15	Model mediation provisions.....11

# MARITIME ARBITRATION ASSOCIATION OF THE UNITED STATES

## *MEDIATION RULES*

### **RULE 1 Definitions**

The following definitions shall apply in these Mediation Rules:

1. "Mediation" is a process in which a neutral person facilitates communication between the disputants to assist them in reaching a mutually acceptable settlement agreement.
2. "Mediator" is a neutral person approved by the MAA and appointed by the parties to conduct the mediation.
3. "MAA" is the Maritime Arbitration Association of the United States, also known as the Maritime Arbitration Association.
4. "Party" is a plaintiff, defendant, claimant, respondent, or other person having a dispute to be mediated, and all are "parties."
5. "Rules" are these Mediation Rules.
6. "Venue" is a place where the mediation is held.

### **RULE 2 Applicability of Rules**

These Rules apply where the parties have agreed to mediation by the MAA or under its Rules. Unless otherwise expressly agreed in writing, the version of these Rules that was most recently published before the request for mediation is filed with the MAA shall be deemed incorporated into such agreement and shall control the mediation. The parties may agree to vary the procedures set forth in these Rules, subject to approval by the MAA. If any provision of these Rules or of any agreement of the parties respecting these Rules conflicts with applicable law, such law shall govern to such extent, and the remaining provisions shall be unaffected. These Rules shall apply until the mediation is concluded, except as otherwise provided in these Rules. The MAA and the mediator shall have the power to rule on the content, effect and interpretation of these Rules, and any amendment thereof, or agreement pertaining thereto. The MAA may amend these Rules as it deems appropriate.

### **RULE 3 Administration of mediation**

The MAA shall administer all mediations conducted under these Rules. The MAA may do so through such representatives as it selects. The MAA may appoint mediators as provided in these Rules and shall serve as liaison between the mediator and the parties. At the request of any party or upon the MAA's own initiative, the MAA may conduct administrative conferences to address such issues as mediator selection, exchange of information, a timetable for hearings and any other administrative matters. The MAA also shall administer any related alternative dispute resolution proceedings, such as arbitration of the dispute.

### **RULE 4 Initiation of mediation proceedings**

(a) A party or parties may request mediation by contacting the MAA and notifying all other involved parties. The request shall include the names, addresses, telephone and fax numbers, and email addresses of the parties to the dispute and their authorized representatives, a copy of the agreement requiring mediation or a statement that the party seeks to mediate the dispute, a brief statement of the nature of the dispute, and the MAA mediation filing fee.

(b) The request for mediation shall be made to the MAA:

If by mail:

MAA Administration  
P.O. Box 11466  
Newport Beach, CA 92658

If by telephone: 1-949-717-0000

If by Internet: [www.maritimearbitration.com](http://www.maritimearbitration.com)

(c) The MAA shall notify the parties of the acceptance of the mediation, and reserves the right to decline the request.

### **RULE 5 Appointment of mediators**

(a) Mediation is a voluntary process. No mediation shall proceed unless and until the parties have agreed upon a mediator.

(b) If the parties do not have a mediator identified, the MAA will provide a list of candidates. In compiling the list the MAA will take into account the substantive nature of the dispute, the venue where the mediation may be held, and the availability of candidates. The MAA shall send each party who has appeared an identical list of names from the available candidates. Each party shall have twenty (20) calendar days from the date on which the list is sent to notify the

MAA the parties have reached agreement on the mediator, or to strike names objected to, number the remaining names in order of preference and return the list to the MAA. If a party does not do so within such time, all persons named in the list shall be deemed acceptable to such party. From among the persons who have been deemed acceptable on both lists, and in accordance with the designated order of mutual preference, the MAA shall invite a mediator to accept appointment. If for any reason the mediator does not accept the appointment, the MAA shall have the right to appoint another mediator.

(c) All mediators must be approved by the MAA. Mediators must comply with the experience, training, educational, and other requirements established by the MAA from time to time for appointment and retention.

(d) Normally a single mediator will be appointed unless the parties agree otherwise. The MAA may recommend co-mediators in appropriate cases.

(e) No appointment of a mediator shall be effective until the MAA has sent the mediator a notice confirming such appointment. By accepting appointment a mediator shall be deemed to have agreed to follow these Rules. Notwithstanding anything in these Rules to the contrary, the MAA shall have the right to remove or replace any mediator at any time, to decline to administer any mediation, or to withdraw upon notice from administering any mediation it has accepted, for any reason or for no reason.

(f) If a mediator is for any reason unable or unwilling to perform the duties of the office, the MAA may, on proof satisfactory to it, declare the office vacant. Vacancies may be filled in accordance with these Rules.

## **RULE 6 Impartiality, disclosure and challenge**

(a) The mediator shall maintain impartiality toward all participants in the mediation process. The mediator shall make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially, and must disclose these matters to the MAA and the parties as soon as practicable after the mediator becomes aware of a matter that must be disclosed. Matters that must be disclosed include past, present and currently expected interests, relationships, and affiliations of a personal, professional, or financial nature with any of the parties to the mediation, their counsel or representatives, the existence of any matter that would be grounds for disqualification of a judge, and any further disclosures that may be required under applicable law. This duty to disclose is a continuing obligation, from the inception of the mediation process through its completion.

(b) The parties shall immediately disclose to each other and to the MAA any and all conflicts of interest or material circumstances known, or which should have

been known, to such party which a reasonable person would consider likely to affect the impartiality of the mediator in the mediation proceeding. A party who fails to immediately disclose such information waives any claim to assert the mediator had a conflict of interest, or was unfair, biased or prejudiced.

(c) If, after a mediator makes disclosures, no party objects to the mediator, the mediator may proceed, unless the mediator or the MAA determine the mediator cannot maintain impartiality toward all participants in the mediation process. If upon objection of a party to the continued service of a mediator, the mediator declines to withdraw, the MAA shall determine whether the mediator should be disqualified, and shall inform the parties of its decision, which shall be conclusive.

### **RULE 7 Party representatives**

(a) A party intending to be represented by another person for purposes of the mediation shall notify the other parties and the MAA of the name, address and telephone number of the representative at least three (3) calendar days prior any conference or hearing at which that person is first to appear. For good cause shown the mediator may excuse this requirement. After the appearance of a representative of a party, the MAA and mediator may discharge any obligations of giving notice to such party by giving notice to the representative.

(b) Unless otherwise agreed between the parties or required by law, the representative of a party need not be an attorney at law. The MAA and the mediator recommend that each party consult with a qualified attorney as to the advisability of legal representation in the mediation.

### **RULE 8 Preliminary conferences**

(a) At the request of any party or at the discretion of the mediator or the MAA, the MAA or the mediator may schedule one or more preliminary conferences with the parties and/or their representatives. The preliminary conference may be conducted by telephone.

(b) During a preliminary conference, the parties and the MAA or the mediator may discuss the future conduct of the mediation, including clarification of the issues, the identification of any necessary discovery, the establishment of a schedule for any hearings, and any other preliminary matters.

### **RULE 9 Exchange of information**

(a) The mediator may establish the manner in which information necessary to conduct the mediation will be exchanged. Information may be exchanged through

written and oral submissions.

(b) The mediator will review relevant documents and such other materials and case citations as the parties deem relevant. The length and timing of submissions of written materials may be determined by the mediator. Unless otherwise directed by the mediator, at least twenty (20) calendar days prior to the first mediation hearing, each party may simultaneously provide to the other party and the mediator a brief of not more than 25 pages in length (excluding exhibits). Reply briefs of not more than ten (10) pages in length be exchanged at least ten (10) days prior to the first mediation hearing. Page limits may be modified by mutual agreement of the parties provided the mediator is notified before the filing deadline.

(c) All writings the parties do not wish to share with other parties shall be clearly marked "Confidential" on each page before they are provided to the mediator. The mediator may request the parties to provide a candid, confidential brief discussing the strengths and weaknesses of the case. The mediator will not show these briefs to the other parties.

#### **RULE 10 Date, time and place of mediation**

The parties shall agree to a venue where any mediation is to be held, and the date, time and place for each mediation hearing. The parties shall respond to requests for mediation dates in a timely manner, be cooperative in scheduling the earliest practicable date and adhere to the established schedule. The parties are encouraged to meet and confer at least fifteen (15) days before the scheduled mediation session to ensure readiness for the matter. If the parties fail to appear at a mediation session, or the session is cancelled or rescheduled on less than ten (10) days notice prior to the scheduled mediation date, the parties may be assessed a cancellation fee in an amount up to the anticipated cost of the mediation session. Requests to reschedule a session may result in the assessment of a rescheduling fee by the MAA.

#### **RULE 11 Conduct of mediation**

(a) The mediator shall conduct the mediation in a manner that allows for voluntary participation and self-determination by the parties. The mediator shall have no authority to impose a settlement on the parties.

(b) Each party shall ensure that individuals with full authority to settle the dispute are present at the mediation. All persons having a direct interest in the mediation and their representatives are entitled to attend. The mediator shall have discretion to exclude any other persons during the mediation.

(c) At or before the outset of the first mediation session, the mediator shall provide a general explanation of the nature of the mediation process, the procedures to be used, and the roles of the mediator, the parties, and any other participants. The mediator shall inform the parties that any resolution of the dispute in mediation requires a voluntary agreement of the parties, and that during the mediation the mediator will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial mediator. The parties are not obligated to agree to any proposals which are made during the mediation. No party shall be bound by anything said or done during the mediation, unless reflected in a written and signed stipulation or agreement.

(d) Subject to the principles of impartiality and self-determination in the mediation process, a mediator may provide information or opinions that he or she is qualified by education, training or experience to provide. The mediator may recommend the use of other services in connection with mediation and may recommend particular providers of other service. However, the mediator must disclose any related personal or financial interests if recommending the services of specific individuals or organizations.

(e) The mediator shall make reasonable efforts to advance the mediation in a timely manner. The mediator need not follow any particular format for the mediation but shall conduct the mediation proceedings in a manner that gives each party an opportunity to participate and make uncoerced decisions. The mediator may meet separately with fewer than all of the parties. The mediator will determine the procedural aspects of the mediation, including the timing and occurrence of separate conferences with the parties.

(f) The mediator will respect the right of each participant to decide the extent of his or her participation in the mediation, including the right to withdraw from the mediation at any time. The mediator shall refrain from coercing any party to make a decision or to continue to participate in the mediation.

(g) The mediator may encourage the parties to continue participating in the mediation when it reasonably appears to the mediator that the possibility of reaching an uncoerced, consensual agreement has not been exhausted. The mediator also may suggest that an unrepresented party consider obtaining legal advice.

(h) The mediator may bring to the attention of the parties the interests of others who are not participating in the mediation but who may be affected by agreements reached as a result of the mediation.

(i) The mediator may combine mediation with other alternative dispute resolution processes only with the informed consent of the parties and in a manner consistent with any applicable law or court order. The mediator must inform the

parties of the general natures of the different processes undertaken and the consequences of revealing information during any one process that might be used for decision making in another process, and must give the parties the opportunity to select another neutral for the subsequent process. If the parties consent to a combination of processes, the mediator must clearly inform the participants when the transition from one process to another is occurring.

(j) The mediator may present possible settlement options and terms for discussion, and may assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties. The mediator has no responsibility for the fairness or legality of any settlement agreement.

(k) The mediator shall have the discretion to determine if and when an impasse has occurred. The mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she suspects that the mediation is being used to further illegal conduct, a participant is unable to participate meaningfully in negotiations, or continuation of the process would cause significant harm to any participant or third party. When the mediator determines that it is necessary to suspend or terminate mediation or to withdraw, the mediator shall do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the participants. A party who wishes to withdraw from mediation may do so by requesting that the mediator declare an impasse, may notify the mediator and other parties in writing, or may leave the mediation hearing.

## **RULE 12 Confidentiality**

(a) At or before the outset of the first mediation session, the mediator shall provide the participants a general explanation of the confidentiality of mediation proceedings. If, after all the parties have agreed to participate in the mediation process and the mediator has agreed to mediate the case, a mediator speaks separately with one or more participants out of the presence of other participants, the mediator must first discuss with all participants the mediator's practice regarding confidentiality for separate communications with the participants. Except as required by law the mediator shall not disclose information revealed in confidence during such separate communications unless authorized to do so by the participant or participants who revealed the information. The mediator shall not use information that is acquired in confidence in the course of mediation outside the mediation for personal gain. At the conclusion of the mediation, the mediator or MAA shall either destroy or return to the parties all materials provided to them during the course of the mediation, except that the mediator may retain his or her personal notes. The mediator shall at all times comply with the applicable law concerning confidentiality.

(b) The mediation process shall be considered a settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such negotiations from later discovery or use in evidence. The entire procedure shall be confidential, and no stenographic or other record shall be made except to memorialize a settlement agreement. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided, however, that facts, documents or other things otherwise subject to discovery or admissible in evidence are not excluded from discovery or rendered inadmissible by reason of their use in the mediation. The mere occurrence of the mediation shall not be considered a confidential fact unless the parties, the MAA and the mediator so agree in writing.

### **RULE 13 Exclusions and limitations**

No party shall call any mediator, the case manager, MAA, or any of its or their directors, officers, employees, agents, representatives or attorneys (collectively and individually, the "MAA parties") as a witness or expert in any proceeding arising from or relating to any dispute which is or has been the subject of an MAA mediation, or relating to any thoughts or impressions any of the MAA parties may have about the parties in the mediation, neither shall any party subpoena any notes, documents or other materials prepared by any of the MAA parties in the course of or in connection with the mediation, nor shall any party offer in evidence any statements, views or opinions of any of the MAA parties. The MAA parties shall have the maximum immunity available under law, no less than judges and court employees have under federal, state and common law from liability for any act or omission in connection with the mediation, and from compulsory process to testify or produce documents in connection with the mediation. The parties acknowledge and agree that none of the MAA parties will be placed in an attorney/client relationship with any party, attorney or witness by virtue of the mediation, that any law firm with which any MAA party may be affiliated is not involved in this mediation, and that any such law firm will not be precluded from undertaking representations in other matters adverse to or in support of any of the parties, or adverse to or in support of any of the attorneys for the parties, even while the mediation is in progress, except for the particular dispute being mediated. These Rules shall not create a basis for challenging a settlement agreement reached in connection with mediation, or a basis for a civil cause of action against any of the MAA parties. None of the MAA parties shall be liable for any act or omission in connection with the mediation. Each party shall defend, indemnify and hold harmless the MAA parties from and against any and all claims and liabilities arising from or related to any act or omission in the performance of any obligation in any mediation in which it was or is a party,

including all expenses, costs and attorney's fees incurred by the MAA Parties in relation thereto.

#### **RULE 14 Costs of mediation**

(a) As a nonprofit organization, the MAA shall prescribe fees for the cost of administrative services. The fees that are published or in effect at the time they are incurred shall be applicable. Fees shall be advanced by the party or parties requesting mediation. A party may obtain from the MAA information about current fees upon request. The MAA may, in the case of the financial hardship of any party, or in the interest of justice, defer, reduce or waive fees in its sole discretion.

(b) Mediators shall be compensated in accordance with their stated rates of compensation. Arrangements to pay the compensation and expenses of mediators shall be made through the MAA, not directly between a party and the mediator. Mediators are independent contractors and not agents or employees of the MAA. The MAA may retain a portion of the mediator's fees for its services. Under no circumstances shall the MAA be liable to any mediator for the payment of compensation or expenses, although it shall transmit received funds as agreed.

(c) The parties shall be jointly and severally liable for the costs and fees of mediation. The parties shall bear equally all costs of the mediation, including all fees, travel, hearing room rental and any other costs, unless they agree otherwise.

(d) The MAA may require one or more parties to deposit in advance of any mediation, the amount it deems necessary to cover costs and fees of the mediation. If such deposit is not timely made, the MAA may order the suspension or termination of the mediation. The MAA may assess additional fees and costs for late payments and for expenses, including costs and attorney's fees incurred in collecting payment.

(e) Costs and fees are due when invoiced, and may be charged on an interim basis, particularly in the case of multiple mediation sessions. At the conclusion of the mediation, the MAA shall render an accounting to the parties and distribute any unexpended funds remaining on deposit, as appropriate. Any unpaid balances shall be immediately due and payable.

#### **RULE 15 Model mediation provisions**

(a) If the parties wish to attempt to settle their dispute by mediation, the following provision may be inserted in contracts:

“Any dispute, claim or controversy arising out of or related to this contract, or the breach, interpretation or validity thereof, shall be settled through good faith negotiation. If the dispute cannot be settled through negotiation, the parties agree to attempt in good faith to settle the dispute by mediation administered by the Maritime Arbitration Association of the United States in accordance with its Rules.”

(b) If the parties wish to arbitrate their dispute if it is not resolved by mediation, the following provision may be inserted in contracts:

“Any dispute, claim or controversy arising out of or related to this contract, or the breach, interpretation or validity thereof, shall be settled through good faith negotiation. If the dispute cannot be settled through negotiation, the parties agree to attempt in good faith to settle the dispute by mediation administered by the Maritime Arbitration Association of the United States in accordance with its Rules. If the parties are unsuccessful in settling the dispute through mediation, the parties agree to binding arbitration administered by the Maritime Arbitration Association of the United States in accordance with its Rules, and final judgment on the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof. The parties understand they are waiving any right to a jury trial.”

(c) The provision may also specify the place of mediation or arbitration, the law to be applied to issues in dispute, the number of mediators or arbitrators, and the language to be used, among other things.