



NEW ENGLAND DISPUTE RESOLUTION MEDIATION AND CASE EVALUATION GUIDELINES

1. General Application

Except as otherwise provided by law or agreed:

- (i) these Guidelines (“Guidelines”), in the form in effect at the time of a case referral, shall be deemed part of the parties’ Mediation or case Evaluation Agreement, and shall guide the conduct of all Mediation, case Evaluations and ancillary case administration with New England Dispute Resolution; and
- (ii) the law of the jurisdiction shall guide the consideration of all substantive legal issues in dispute.

2. Case Referral Guidelines

Case referral with New England Dispute Resolution is fast and simple. A referral can be made at any point in the legal process. Simply submitting party names or basic case information will initiate the procedure. This can be accomplished by email, phone, or fax. A New England Dispute Resolution case manager will follow to acknowledge receipt, assess your particular needs, and proceed accordingly. A case submission shall be deemed to occur when all parties involved have agreed to use the services of New England Dispute Resolution.

3. Case Administration

Following a case referral, New England Dispute Resolution shall confer with the parties to:

- (i) ascertain the issues in dispute, and select a dispute resolution procedure:
- (ii) schedule a time and place for the Mediation or Case Evaluation conference (“Conference”); and
- (iii) appoint a mediator or case evaluator from New England Dispute Resolution’s Neutral Panel (“Neutral”).

4. Case Fee; Expenses

(a) Case Fee

Each party shall pay a Case Fee in the amount set forth in New England Dispute Resolutions applicable Fee Schedule in effect at the time of a case submission which shall be due and payable no later than two weeks before the scheduled Conference. In addition to New England Dispute Resolutions case administration services, the Case Fee shall entitle the parties to *two hours* of Neutral case time. Any additional Neutral case time or travel time in excess of *one hour* shall increase the case Fee at the overtime rates set forth in the Fee Schedule. The Fee Schedule shall also establish the conditions for partially refunding the Administration and case Fees.

(b) Other Expenses

All additional expenses incurred by New England Dispute Resolution including those for stenographers, video equipment, interpreters, witnesses and documentary evidence, shall be paid by the party ordering or producing the same. Off site conference facility rental fees may be assessed to the parties on an equal basis.

5. Case Summaries

At least *two weeks* before the scheduled Conference, each party shall deliver to New England Dispute Resolution, for redelivery to the Neutral, a Case Summary outlining the party's arguments and proofs supporting its positions on the issues in dispute.

6. Postponements; Cancellations; Penalties

Conferences may be:

- (i) *postponed* at the request of any party for any reason, or upon New England Dispute Resolution's initiative for good cause; and
- (ii) *cancelled* at the request of any party for any reason.

The party or parties requesting or causing the postponement or cancellation; however, shall be liable for any applicable postponement or cancellation penalty set forth in the Fee Schedule.

7. Representation

Parties are free to engage legal counsel, interpreters, and other authorized representatives, and shall notify one another and New England Dispute Resolution of such engagements for the purpose of future notices and other correspondence hereunder.

8. Privacy; Stenographic Record

Subject to New England Dispute Resolution's right to observe, Conferences shall be private and attended only by the parties, their designated representatives and other

individuals permitted by all the parties. No audio, visual, or stenographic record thereof shall be made without the prior consent of all the parties.

9. Delivery of Notice

Unless otherwise specified, any notice or other papers required to be given hereunder shall be sufficient if in writing and delivered by regular mail, facsimile, or other written forms of electronic communication to the last known address of the intended party or its designated representative.

Any such notice shall be deemed delivered: (i) if by hand or electronic communication, on the date of delivery; (ii) if by overnight carrier, on the day following its delivery to the overnight carrier; and (iii) if by regular or certified mail, on the second day following its mailing.

10. Exclusion of Liability

Neither New England Dispute Resolution (its directors, officers, or employees) nor its Neutrals (all of whom are independent contractors) shall be liable to any party for any negligence, act or omission with regard to Mediations, Case Evaluations, case administration or other activities conducted under these Guidelines.

Moreover, neither New England Dispute Resolution nor any Neutral involved in a case under these Guidelines shall be a necessary party to any judicial proceedings relating to such a case.

11. Conferences

(a) General Order of Proceedings.

(i) Mediations. Mediation Conferences usually commence with a joint session in which each party (or designated representative) has an opportunity to clarify the issues in dispute, briefly present its arguments and proofs, and respond to the presentation of the other parties. The parties shall not interrupt one another, withholding all questions and comments until the close of the other party's presentation. The Neutral also may caucus privately with one or more of the parties to (i) further communicate positions and settlement proposals; (ii) procure and exchange necessary information; (iii) confidentially review case strengths and weaknesses; and (iv) search for a zone of agreement and settlement point therein.

(ii) Case Evaluations. Case Evaluation Conferences usually commence with the joint session described above, and conclude with the Neutral's issuance of an oral, advisory award and supporting case analysis (followed in writing, if requested).

Before adjourning the Conference, or at any time thereafter, the parties may attempt to reach a negotiated settlement with or without the Neutral's continued assistance. The parties shall *not* disclose current negotiation offers and demands to the Neutral, and any such disclosure may subject the Neutral to disqualification by New England Dispute Resolution.