



# **MAINE HUMAN RIGHTS COMMISSION THIRD-PARTY NEUTRAL MEDIATION PROGRAM HANDBOOK**

## **MAINE HUMAN RIGHTS COMMISSION**

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## **1. Introduction**

The Maine Human Rights Commission (“the Commission”) is the state agency that administers the Maine Human Rights Act, 5 M.R.S. §§ 4551 et seq. (the “MHRA”), the state antidiscrimination law. As a part of that responsibility, the Commission conducts preliminary investigations of discrimination complaints to determine whether there are reasonable grounds to believe that unlawful discrimination occurred. Prior to making such a finding, the Commission provides the parties to a complaint an opportunity to resolve the matter by settlement agreement. Participation in the Third-Party Neutral Mediation Program (“Program”) is one such opportunity to resolve a complaint.

Mediation is an informal, voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The mediators in the Commission’s Program are neutral third parties who are contracted by the Commission and are not Commission employees. An assigned mediator assists the opposing parties to reach a voluntary negotiated resolution. The mediator has no authority to impose a settlement. Rather, the mediator helps the participants address the issues in dispute in order to reach a voluntary settlement.

The purpose of this handbook is to provide guidance and direction for the parties and mediators who participate in the Program. It establishes procedures that ordinarily should be followed but does not create rights or establish causes of action.

## **2. Number and characteristics of mediators**

The Executive Director shall maintain a roster of between 4 and 7 mediators who she or he determines are qualified to conduct mediations on complaints filed with the Commission. The Executive Director may remove any mediator from the roster at any time for any reason. A mediator may not be a current employee of the Commission. The cost of mediation shall be paid by the Commission on terms set by the Commission and agreed to by the mediators.

## **3. Assignment of complaints for mediation**

The Executive Director shall determine the number of complaints that may be referred to mediation depending on available resources. The Executive Director or his/her designee shall select which complaints are eligible for referral to mediation and shall invite the parties to participate. A mediation shall not occur unless all parties agree and sign the Commission’s “Agreement to Mediate” (attachment A). Factors considered by the Executive Director or his/her designee in deciding whether to make a referral shall include the parties’ interest in participating in mediation and the likelihood that the complaint will be resolved with or without mediation. The Executive Director or his/her designee may terminate a referral to mediation at any time and for any reason.

## **4. Assignment of mediators**

The Executive Director or his/her designee shall assign mediators from the roster on a rotating basis. The selected mediator will be provided a referral form (or email) that includes

contact information for the parties and their attorneys. If a mediator does not accept an assignment within three business days of the initial referral, the Executive Director or his/her designee shall select the next mediator on the roster. Once a mediator has accepted an assignment, the mediator will be provided with a copy of the complaint as well as relevant case documents.

## **5. Mediator conflict of interest**

A mediator shall decline or discontinue an assignment if the mediator has a conflict of interest. A conflict of interest exists when the mediator has a professional, financial, familial, or personal interest that conflicts with the mediator's objectivity. In addition, a party may raise a question of whether a mediator has a conflict of interest with the Executive Director or his/her designee, who will make a determination after contacting the mediator for additional information. If a mediator has a conflict of interest, the Executive Director or his/her designee will assign the case to the next mediator on the roster. Mediators should also endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention.

## **6. Payment for mediations**

When the parties agree to mediate, the Maine Human Rights Act permits one or more parties to the complaint to agree to pay the costs of mediation. Because the Commission does not have sufficient funding to provide mediations free of charge, parties to a Program mediation will be assessed a mediation fee. The per-case fee for mediation shall be reviewed and confirmed by vote of the Commission; the Commission may change the fee by majority vote at a public meeting. Assessing a fee for Program mediations allows the Commission to provide a stipend to the assigned mediator to offset costs incurred in the course of providing volunteer service to the Commission and the parties in dispute. The mediation stipend is funded from the pool of fees paid by the parties who accept the invitation to use the Commission mediation program.

- A. The fee collected by the Commission pursuant to this section shall be maintained in the MHRC "Mediation Program Account" (MPA) designated to support and cover the costs of the Program. Use of the funds in the MPA shall be restricted to the following:
  - i. Members of the MHRC 3rd Party Neutral Mediation Panel shall receive a stipend for each case referred for mediation. The amount of the stipend for mediators shall be reviewed and confirmed annually by vote of the Commission.
  - ii. A portion of the fee for mediation will be designated by the Commission to help defray the costs of mediation for indigent unrepresented parties, and
  - iii. A percentage of the funds in the MPA may be designated by the Commission to offset administrative expenses directly attributed to the Mediation Program. Admin expenses will be limited to no more than 2% of the mediation fees collected.

The Commission will include in its annual report a financial report on the Mediation Program Account.

- B. A party may request that the Commission waive the mediation fee in the event the party is unable to pay the fee, utilizing the Commission’s “Application to Waive Fees” (Attachment E). Whether to grant the waiver application, or to make further inquiries to the party making the request about its contents, is entirely within the discretion of the Commission’s Executive Director. Also, the Commission’s ability to provide pro-bono mediation for an indigent party is subject to availability of funds in the MPA.

If the Commission does grant a waiver of the mediation fee for a party, and the party ultimately recovers funds sufficient to pay the mediation fee as part of a settlement reached from the mediation, the party will be required to repay the Commission for the previously-waived fee. The Executive Director or his/her designee will not inform the assigned mediator, or opposing party, as to whether a party in a given mediation has requested, been granted, or been denied a waiver of the mediation fee.

- C. Cases referred to the Program’s panel will be assessed the Mediation Program Fee when referral to a mediator is confirmed. Fees for mediation must be paid in advance of the scheduled conference. The Commission does not send invoices for the Mediation Program Fee. If the mediation fees are not paid prior to the mediation’s scheduled time, the Commission may cancel the mediation altogether.
- D. If mediation is cancelled by either of the parties, each party will receive a refund of his/her/its fee, unless the party’s conduct caused the mediator to expend substantial resources in anticipation of or preparation for mediation. Whether to refund a party’s fee (or a portion of the fee) paid is solely within the discretion of the Executive Director. The closer a cancellation occurs to the mediation date, the more likely the Commission is to retain a portion of the fee paid to cover the mediator’s work already completed.

## **7. Conduct during mediations**

- A. Once a referral has been accepted by a mediator, she or he will contact the parties to set up a mutually agreed time for a mediation session to take place as soon as possible after the referral. The mediator will mail, e-mail, or fax written confirmation of the mediation session date and location to the parties and their representatives.
- B. Mediators ordinarily should schedule only one mediation session per day.
- C. Once scheduled, a mediation session shall not be rescheduled other than for good cause as determined by the mediator.
- D. Mediation sessions shall be conducted at the offices of the Maine Human Rights Commission or, for good cause shown in the discretion of the mediator, at another location if the alternative location is: fully insured for liability coverage for the same amount the Commission is; either neutral to both parties or acceptable to both parties if not neutral; and is fully accessible for persons with disabilities. Both parties must confirm that these criteria are met in writing prior to the mediation occurring.

- E. The mediation session shall take place no later than 45 days after the referral unless the Executive Director or his/her designee extends this deadline for good cause shown.
- F. The mediator may, at her or his discretion, ask the parties to submit information to further the mediation process.
- G. In calculating any deadline imposed by the Commission relating to its investigation of a complaint, the prescribed period shall not include time that elapses while a complaint has been referred to the Mediation Program.
- H. In addition to the assigned mediator, mediation session attendees may include:
  - i. Individual parties;
  - ii. A management employee or officer of a corporate party, with appropriate settlement authority, whose interests are not entirely represented by an insurance company;
  - iii. A designated representative of a government agency party whose interests are not entirely represented by an insurance company;
  - iv. An adjuster for any insurance company providing coverage potentially applicable to the case, provided that the adjuster participate in the conference with appropriate settlement authority;
  - v. Counsel for all parties; and
  - vi. Nonparties whose participation the mediator determines is essential to settlement discussions (e.g., lienholders).
- I. Attendance at a mediation session shall be in person unless the mediator allows attendance by telephone or video conference for good cause shown.
- J. The mediator shall only facilitate the settlement of claims raised in the Commission complaint and other claims that are essential to the settlement of that complaint. The mediator shall not assist the parties in drafting an agreement, however, that resolves claims other than those raised in the Commission complaint.
- K. The mediation session shall not be transcribed or recorded.
- L. At the conclusion of the mediation, the mediator will provide the Executive Director or his/her designee with any documents created or collected by the mediator relating to the mediation. The Compliance Manager shall maintain these materials in a separate file from the investigative file relating to each complaint.
- M. An assigned mediator shall:

- i. Assist the parties in resolving the complaint by agreement;
  - ii. If settlement is reached, either:
    - (a) Prepare a settlement agreement on the Commission's form, which shall be signed by the parties and forwarded to the Commission for approval pursuant to Procedural Rule § 2.04(C); or
    - (b) Prepare and have Complainant sign a Commission withdrawal form pursuant to Procedural Rule § 2.02(G), which shall be forwarded to the Compliance Manager together with the final terms of settlement; and
  - iii. At the conclusion of the mediation session, provide each party with a Mediation Survey (attachment B) and stamped envelope addressed to the Commission.
- N. Reasonable accommodation. Anyone planning to attend a mediation session who would like to request a reasonable accommodation (e.g. interpreter services, accessible location) should submit the request to the Compliance Manager in advance of the mediation session, and the Compliance Manager will facilitate providing the accommodation. If the assigned mediator becomes aware of a request for accommodation, she or he shall inform the Compliance Manager as soon as possible so that an accommodation may be provided in a timely manner.
- O. Complaints. Anyone who participates in the Mediation Program may file a complaint relating to any aspect of the Program by submitting a Complaint Form (attachment C).

## **8. Confidentiality**

- A. Pursuant to the MHRA, 5 M.R.S. § 4612(1)(A), evidence of conduct or statements made in compromise settlement negotiations, offers of settlement, and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. All conduct or statements made while a complaint has been referred to mediation are subject to this confidentiality requirement.
- B. Mediators must sign an Agreement of Nondisclosure (attachment D).
- C. Maine Rules of Evidence 408 (Compromise and Offers to Compromise) and 514 (Mediator's Privilege) apply to mediations conducted pursuant to this Program.
- D. All parties and other persons participating in a mediation conference will be required to sign an Agreement of Nondisclosure agreeing to keep confidential any oral or written statements or offers made pursuant to settlement discussions.