

**NATIONAL ASSOCIATION of
REGULATORY UTILITY COMMISSIONERS**

Kosovo – NARUC Partnership

**MEDIATION at the PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

**Presented to
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MEDIATION PROCESS

§ 69.391. General.

(a) The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. To further promote the goal of obtaining negotiated settlements in the public interest, the Commission has adopted guidelines that offer the parties, in certain contested proceedings, the option of mediation.

(b) Mediation is intended to be a flexible program designed to facilitate the amicable resolution of disputes between parties. The Office of Administrative Law Judge (OALJ) manages the mediation program.

Source

The provisions of this § 69.391 adopted March 4, 1994, effective March 15, 1994, 24 Pa.B. 1205; corrected February 4, 2000, effective January 8, 2000, 30 Pa.B. 634. Immediately preceding text appears at serial page (261216).

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

§ 69.392. Availability of mediation process.

(a) *Mediation.* Mediation is available to parties in all contested proceedings, or proceedings which could be contested, when the proceeding qualifies for mediation. A proceeding qualifies for mediation when mediation is deemed appropriate by the Office of Administrative Law Judge (OALJ).

(b) Requesting mediation.

(1) Parties may request mediation, prior to the commencement of a proceeding, by sending a letter request to the Mediation Coordinator of OALJ, and a copy of the request to the Secretary of the Commission.

(2) Parties may request mediation in their pleadings.

(3) Parties may request mediation during the course of a proceeding.

(c) *Consent to use mediation process.* The OALJ may notify the parties in a proceeding that mediation may be appropriate and ask whether the parties consent to use the mediation process.

(d) Party with the burden of proof.

(1) Except as otherwise directed by the Commission, there can be no mediation unless the party with the burden of proof consents to mediate.

(2) When the party with the burden of proof consents to mediation in proceedings subject to a statutory deadline for adjudication, that party must also agree, in writing, to extend the statutory deadline by, at least, 60 days.

(e) *Assignment by Commission.* The Commission may assign a case to the OALJ for mediation.

Source

The provisions of this § 69.392 adopted March 4, 1994, effective March 15, 1994, 24 Pa.B. 1205; amended May 19, 1995, effective May 30, 1995, 25 Pa.B. 1966; amended October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616. Immediately preceding text appears at serial pages (241324) to (241325).

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

§ 69.393. Assignment and role of mediator.

If the Commission assigns a case for mediation, or OALJ determines that a case should go forward with mediation, OALJ will assign a mediator to the proceeding. The mediator's role will be to facilitate settlement of the contested issues between, or among, the parties, as opposed to rendering a decision.

Source

The provisions of this § 69.393 adopted March 4, 1994, effective March 15, 1994, 24 Pa.B. 1205; amended October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616. Immediately preceding text appears at serial page (241325).

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

§ 69.394. Notice.

(a) If the Commission assigns a case for mediation, or the Office of Administrative Law Judge (OALJ) determines that a proceeding should go forward with mediation, the parties will be notified of the time, date, and place of the mediation session, as well as the name, address, and telephone number of the mediator.

(b) If the OALJ determines that the proceeding should not be set for mediation, the parties will be notified of this as well as the procedure to be used in lieu of mediation.

Source

The provisions of this § 69.394 adopted March 4, 1994, effective March 15, 1994, 24 Pa.B. 1205; amended October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616. Immediately preceding text appears at serial page (241325).

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

§ 69.395. Rules.

(a) For cases in which hearings must be commenced within 90 days, a party's request for mediation shall be construed as a waiver of that requirement.

(b) The participants in a mediation proceeding must agree to abide by mediation rules and procedures established by the Office of Administrative Law Judge. Failure to abide by these rules and procedures, following commencement of mediation, could lead to the termination of the mediation.

Source

The provisions of this § 69.395 adopted March 4, 1994, effective March 15, 1994, 24 Pa.B. 1205; amended October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616. Immediately preceding text appears at serial page (241325).

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

§ 69.396. Conclusion of mediation.

(a) When an agreement is reached in a formal complaint proceeding, the complaint may be withdrawn, unless otherwise provided for by law or regulation.

(b) When appropriate, the mediator should submit a report to an administrative law judge, or the Commission. The report will describe only the procedural background and the result of the mediation.

Source

The provisions of this § 69.396 adopted October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616.

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

§ 69.397. Flexibility.

To ensure maximum flexibility, the rules and procedures used in mediation are subject to modification as deemed appropriate to facilitate a resolution of a dispute.

Source

The provisions of this § 69.397 adopted October 29, 1999, effective October 30, 1999, 29 Pa.B. 5616.

Cross References

This section cited in 52 Pa. Code § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

OPENING REMARKS OF MEDIATOR

Matters in brackets ([]) are for telephonic mediations.

1. Introduction.

- a. Ask each party to introduce himself/herself, state his/her role in the mediation, and say by what name he/she prefers to be called for the mediation.
- b. Explain attendance sheets. [Get names for attendance sheets]
- [c. Please always state who you are when speaking.]
- d. This is an informal proceeding. Commend parties on their willingness to cooperate in seeking a solution to the issues raised in this case, by mediation.
- e. Thank _____ for providing the room(s) for mediation and _____
_____ for his/her/their willingness to meet here.

2. Pertinent Procedural Background. (attached)

3. Confirm no conflicts.

4. Definition of Mediation.

- a. An informal, non-adjudicatory process through which an impartial third party (the mediator) assists the parties in reaching a mutually acceptable settlement of their disputes. The process allows the parties to control the outcome of their disputes, as opposed to having an administrative law judge and/or the Commission control the outcome.
- b. Please keep in mind that the purpose of mediation is not to determine fault, assign blame, or deal with past issues. Rather, the focus is on the future and on a consensual resolution that the parties can live with.

5. My role as a mediator.

I am not a judge, and do not make a decision. Also, I do not give advice, represent any party, or evaluate. I am a facilitator and my function is to help the parties realize and understand their concerns and resolve their disputes.

6. Description of mediation procedure.

- a. No court reporter
- b. Meet together - Each side will give an opening statement including presenting the facts and the party's perspective. This may include presentation of written materials, if any, and the naming of those persons who will present information on behalf of the party, if any, and what information they will provide. After, that each party will be given an opportunity to ask non-argumentative questions of the other party, to clarify any matters. In support of answers to questions, the party may present whatever oral information and additional documents necessary. The parties may ask additional questions based upon the written and oral information presented.
- c. Determine the issues and present options for each issue
- d. Negotiation Stage
 - (1) Private meetings with parties, if necessary.
 - (2) Meet together again and try to seek agreement among the parties.
- e. The parties have a duty to mediate in good faith.
- f. Any party may withdraw from the mediation at any time.
- g. If a party withdraws, the mediation will/may terminate. The mediation will/may also terminate if the parties cannot reach an agreement, or if the mediator terminates the mediation. In the case of termination, the matter will be set for hearing before an administrative law judge.
- h. If an agreement is reached, it may be referred by me to an administrative law judge for approval. The agreement becomes public at that point. An agreement, finally approved by the Commission, is legally enforceable.

In a complaint case, the complainant may withdraw the complaint.

7. Confidentially.

- a. Distribute rule.
- [b. Everything that takes place during mediation is confidential. Neither the parties, nor anyone else in the rooms where people are participating by phone, shall disclose anything that takes place in mediation, unless otherwise provided for by law, regulation, or rule.]
- [c. Is there anyone in the room(s) other than those already identified?]
- [d. Please let me know if anyone else enters the room.]
- [e. Recording a mediation session by tape, or by any other method, is not permissible.]

8. Conduct.

The mediation will be conducted with politeness and good manners. For example, there should be no interruptions, vulgarity, etc. Conduct shall be in accordance with the Pennsylvania Bar Association Working Rules for Professionalism.

9. Any questions?

10. Does everyone agree to abide by the procedures and rules as stated?

11. Have you started any negotiations up to now? – Results?

12. It is the Commission's practice that the party with burden of proof speaks first.

MEDIATION
CONFIDENTIALITY RULE

1. Everything that takes place during mediation is confidential.

2. Neither the parties, nor anyone else in the mediation room, shall disclose anything that takes place in mediation, unless otherwise provided for by law, regulation or rule.

NOTES

[illegible]