



ADMINISTRATIVE RULES OF MONTANA



38.5.4009 MEDIATION

- (1) Any party negotiating an agreement under section 252 of the 1996 Act may, at any point in the negotiation, ask the commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation. Parties need not seek mediation by the commission and are free to employ the services of a private mediator.
- (2) If a party requests mediation by the commission, the commission will consider the type of mediation requested by the parties and will use one of the following processes:
 - (a) The commission may appoint a staff member to mediate. Employees acting as mediators will not participate in the arbitration or approval process for the same agreement, unless the parties consent.
 - (b) The commission may appoint a commissioner to mediate. A commissioner acting as a mediator will not participate in the arbitration or approval process for the same agreement, unless the parties consent.
 - (c) The commission may use a co-mediation process involving both a commissioner or a commission staff member and a neutral professional mediator from outside the agency. If co-mediation is chosen, the negotiating parties shall jointly retain the services of a professional mediator acceptable to all parties and shall share the costs of the mediator equally. The parties shall secure the mediation services and identify the professional mediator to the commission not later than five business days after the request for mediation, unless more time is allowed by the commission. The commission will appoint a commissioner or a staff member to serve as a co-mediator. The parties may recommend the area of expertise required by a commission staff mediator, who may provide technical or other related information and advice to the professional mediator as needed throughout the mediation process.
- (3) The mediator shall have discretion to regulate the course of the mediation, including scheduling of mediation sessions, in consultation with the parties. The following general procedures apply:
 - (a) the mediator may not impose a settlement but can offer proposals for settlement;
 - (b) the mediator may meet individually with the parties or attorneys during mediation;
 - (c) only the parties to the negotiation may attend the mediation session(s) , unless all parties consent to the presence of others;
 - (d) parties shall provide the mediator with a brief statement of position and relevant background information prior to the first mediation session, including a list of all issues

raised in the negotiation on which mediation is sought and a list of all issues the parties have resolved through negotiation;

- (e) the mediator may not provide legal advice to the parties, nor are any mediator's statements as to law or policy binding on the commission, unless later adopted by the commission;
 - (f) the mediation process is considered to be a private resolution process and is confidential to the extent permitted by law; and
 - (g) no stenographic record will be kept.
- (4) Although mediation is generally a voluntary process, section 252(a) (2) of the 1996 Act requires all parties to participate in a commission mediation, once requested, unless disputes are otherwise resolved. The mediator may terminate the mediation if it appears that the likelihood of agreement is remote . Ordinarily, a mediation should not be terminated prior to the completion of at least one mediation session.
- (5) Parties may indicate their preference for the skills desired in a mediator and may indicate a preference for the preferred mediation process as set forth in ARM 38.5.4009(2) .
- (6) For good cause, the commission may refuse to mediate negotiations between parties.

Authorizing statute(s): Sec. 69-3-103, MCA

Implementing statute(s): Secs. 69-3-102 and 69-3-201, MCA

History: NEW, 1997 MAR p. 319, Eff. 2/11/97.