

MEDIATION GUIDELINES

FranArb, Inc., doing business as Franchise Arbitration and Mediation Services ("FAM"), is an arbitration and mediation referral service specializing in the resolution of disputes between franchisors and franchisees. FAM's address is 3501 Jamboree Road, Suite 6000, Newport Beach, California 92660-2960. FAM's telephone number is (949) 854-0374 and its fax number is (949) 856-3245. FAM's website is www.franarb.com and e-mail address is info@franarb.com.

The following guidelines provide a standardized method for processing a mediation involving FAM. Although FAM-referred mediators have a wide degree of latitude in conducting proceedings, they must not charge more than \$500 per hour for their services and must conduct themselves in a professional manner at all times.

A mediation proceeding that is referred to FAM will be undertaken between franchisors and franchisees pursuant to a mediation clause in the Franchise Agreement, or if there is no such clause in the Franchise Agreement, but the parties nevertheless wish to mediate the dispute before a FAM-referred mediator, an appropriate Submission Agreement must be completed and signed by the parties (this form may be downloaded in an Adobe PDF fill-in format at www.franarb.com/forms) and forwarded to FAM by mail or overnight courier.

When the matter has been properly referred to FAM for resolution, inquiry will be made of all FAM recommended mediators (these are typically transactional attorneys with substantial franchise law experience) that are located within the general vicinity of the site designated for the mediation to determine their availability and eligibility (conflicts check). Nominated mediators who receive an availability and eligibility inquiry must carefully review the nature of the matter and the identity of the parties in order to determine that there are no conflicts of interest. The name of a potential mediator who has indicated to FAM that he or she is eligible to serve as a FAM-referred mediator in the particular matter and is willing to have his or her name referred will be sent by FAM to the parties in dispute. If one or both of the disputing parties objects to the nominated mediator, an alternative mediator will be nominated. This process will be repeated until a mutually acceptable mediator is selected.

The mediator ultimately selected for the matter will be promptly notified by FAM of his or her selection and will be forwarded all related information then in the possession of FAM, including a copy of the Demand for Mediation (or Submission Agreement) and correspondence. At the same time, the parties in dispute will also be notified of confirmation of the mediator's appointment.

The selected mediator will make telephone contact with the disputants to make arrangements for the mediation and collect a retainer from the disputants based on six hours at the mediator's billable rate ($\frac{1}{2}$ from each party). When these preliminary matters have been completed, the mediator will set the date for the mediation and carefully review any documents submitted by the parties prior to the mediation. It is useful but not mandatory for parties to submit written position statements prior to the mediation.

Recognizing the unique consensual nature of the franchise relationship, and desiring to promote the continuation of the franchise relationship whenever feasible, FAM encourages mediation as an initial method of dispute resolution before submission to binding arbitration or other form of binding resolution. Mediation is also recommended as an initial resort to resolve disputes because of the relevant requirements to disclose certain matters in a franchise disclosure document, including in some instances material arbitration proceedings, and because mediation is very useful as a settlement technique.

The mediation process is straightforward and informal. An initial meeting is held in a conference room, with each party having the opportunity to present his or her view of the matters in issue. The mediator will introduce himself or herself and explain the process of mediation. There are typically no reporters present to record proceedings and the mediator must keep his or her own notes respecting the proceedings. Immediately after the initial meeting of the disputants, the parties are separated and placed in different rooms. Then, the mediator confers separately with each party, narrowing the issues and attempting to arrive at a mutually acceptable resolution of each issue.

Although considerable discretion in the conduct of the mediation process rests with the mediator, FAM recommends that no more than six hours be allotted to mediation sessions unless significant progress is being made, but all decisions on timing are the mediator's and the disputing parties' to make. If no significant progress is being made after six hours of alternative caucusing, the mediator will bring the parties together, review the progress that has been accomplished and reschedule a follow-up meeting not earlier than the next business day.

Once all issues have been significantly agreed to, the parties will be brought together again in the conference room and the agreements would be summarized. The parties may then sign a settlement agreement or make other arrangements to implement the agreed dispute resolution. At the conclusion of the mediation (even if unsuccessful), a brief written summary of the resolution of the issues will be sent to the parties.

The entire mediation process will be confidential and the conduct, statements, promises, offers, views and opinions of the mediator and the parties will not be discoverable or admissible in any legal proceeding for any purpose; provided, however, that evidence that is otherwise discoverable or admissible will not be excluded from discovery or admission as a result of its use in the mediation. Information contained in documents or other writings received by a mediator while conducting the mediation must be treated as privileged and confidential. The mediator should not divulge such information or testify or give evidence in regard to the mediation in any adversary proceeding or judicial forum.

The disputing parties must maintain the confidentiality of the mediation proceedings and may not rely upon, or introduce as evidence in any arbitral, judicial or other proceeding, any settlement offers, admissions made by another party, or suggestions or views of the mediator or another party. Furthermore, any documents or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding, will not be rendered inadmissible by reason of their use in the mediation proceeding.

As an alternative to mediation, the parties may desire to engage in non-binding arbitration. This is substantially the same procedure as binding arbitration, except that the decision arrived at by the arbitrator is not binding on either party. This technique is useful as a settlement device, but due to the cost and the need to call witnesses (who may have to be compensated), non-binding arbitration is not appropriate for many disputes.

The parties may also desire to use the services of a mediator in connection with supervised settlement negotiations. This would involve the mediator serving as a moderator in an open debate between the disputants in a conference room. The process is similar to mediation, with the exception that the parties are not separated during negotiations. Supervised settlement negotiations are recommended only in instances where the disputes are relatively minor or as an initial prelude to mediation, in order that the disputed issues can be more adequately framed for the mediator.

BILLING PROCEDURES

FAM receives an administrative fee of \$950 to coordinate the mediation and handle the mediator referral. FAM mediator services are billed **at a rate not to exceed \$500 per hour**, in hourly increments (nearest .10 or .25 hour) normally billed by the mediator, plus costs. As soon as the mediation is concluded, the mediator will send the disputing parties an itemized statement of fees and costs (and either a refund check or invoice requesting additional payment). If the mediation extends for another day (this is rare), the mediator will request an additional retainer of six hours at the mediator's hourly rate.

By submitting the dispute to resolution by mediation conducted under these Guidelines before the mediator nominated by FAM and selected by input from the parties in dispute, said parties in dispute are deemed to have consented that neither the mediator nor FAM are or will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any mediation under these Guidelines.