

**TEXAS COURT REPORTERS CERTIFICATION BOARD  
ALTERNATIVE DISPUTE RESOLUTION POLICIES AND PROCEDURES**

Effective 1/15/2005  
(Amended 4/29/2006)

- A. Pursuant to section 52.0175 of the Texas Government Code, the Texas Court Reporters Certification Board (the “CRCB” or the “Board”) has adopted the following alternative dispute resolution (“ADR”) policies and procedures. By doing so, the Board does not waive the immunities enumerated in section 2009.005(a) and (b) of the Texas Government Code.
- B. Pursuant to the CRCB’s administrative attachment to the Office of Court Administration (“OCA”) the Board herein adopts OCA’s ADR procedures for internal employee conflicts or complaints and contract disputes.
- C. Although not subject to Chapters 2001 and 2003 of the Texas Government Code, the CRCB herein conforms, to the extent possible, its ADR procedures for disciplinary actions against a certified shorthand reporter (“CSR”), court reporting firm, or affiliate office to the model guidelines issued by the State Office of Administrative Hearings.
- D. **Parties:**
  - (1) At any time after the filing of a complaint against a CSR, court reporting firm, or affiliate office and prior to the time the Board has conducted a formal hearing on the complaint, the person(s) filing the complaint (“Complainant”) or the person(s) or entity(ies) against whom the complaint has been filed (“Respondent”), may initiate an ADR proceeding as outlined herein. The Chairman may refer a matter to a mediated settlement conference (“MSC”) without the agreement of all parties, but will consider any party’s objections to the appropriateness of an MSC in a specific complaint.
  - (2) After the Board has conducted a formal hearing on the complaint, if any sanction (including, but not limited to, any revocation, suspension, reprimand, or administrative penalty) is assessed against the Respondent, but prior to the initiation of any de novo appeal to the district court pursuant to TEX. GOV’T CODE § 52.030, the Board or the Respondent may initiate an ADR proceeding as outlined herein.

E. **Procedure:**

- (1) **Description.** An MSC is a confidential conference in which parties in a disciplinary action explore the possibility of resolving pending disputes with the assistance of a third party neutral mediator. The mediator will be appointed as described herein.
- (2) **Purpose.** An MSC may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary proceeding or in any litigation arising out of the disciplinary proceeding, or to reach agreement about how to handle disputed matters.
- (3) **Power to Settle.**
  - (a) In an MSC initiated under section D(1), neither the Complainant nor the Respondent shall have the power to bind the Board to any resolution of any complaint pending before the Board. If the Complainant and the Respondent are able to resolve some or all of the issues between or among them, the Board may consider this fact, and the terms of the agreement, in determining what action, if any, to take on the complaint.
  - (b) In an MSC initiated under section D(2), the Board shall appoint one or more of its members to attend the MSC. If the mediation occurs before the next board meeting, the chair or his/her designee shall be the Board's representative at the mediation with the authority of negotiating in good faith subject to the requirement of Board approval for any agreement. Prior to the MSC, the Board shall provide its representative sufficiently clear instructions and authority as appropriate under the circumstances. The representative of the Board shall attend the MSC and participate in the proceedings in good faith and in an effort to resolve the dispute within the parameters of the instructions and authority conferred upon the representative by the Board. In the event a settlement of some or all of the disputed issues is reached during the MSC, the Board shall review the terms of the settlement at the next regularly-scheduled meeting of the Board.
    - (1) If the Board determines that the settlement terms are consistent with the instructions and authority conferred upon the Board's representative prior to the MSC, the Board shall ratify the terms of the settlement.

- (2) If the Board determines that the settlement terms are not consistent with the instructions and authority conferred upon the Board's representative prior to the MSC, the Board may:
  - a. Accept the settlement terms and ratify the actions of the Board's representative;
  - b. Reject the settlement terms and restore all proceedings on the complaint to the status quo as it existed immediately prior to the commencement of the MSC proceeding; or
  - c. Refer the matter back to the MSC for further negotiation.
- (3) The Director shall notify all appropriate parties of any action taken by the Board pursuant to section E(3)(b)(1) or (2).
- (c) The mediator facilitates the process and assists the parties in communicating their true interests. The mediator does not have the power to compel any agreement or to enter any orders in a disciplinary action.
- (4) **Payment of Costs.** The party requesting the MSC shall be responsible for paying the fees of the mediator.
- (5) **Appointment of Mediator.** A mediator may be appointed in one of the following ways.
  - (a) In an MSC initiated under section D(1), the Mediator shall be assigned by the Chairman under the following procedures:
    - (1) The parties may agree to jointly retain and pay a mediator who is qualified as described in TEX. CIV. PRAC. & REM. CODE § 154.052 to serve as the mediator. Parties who wish to explore this option will be given a reasonable time to do so by the Chairman.
      - a. The parties shall notify the Chairman in writing of their agreement to retain a mediator. That notice must include: the name, address, and telephone number of the mediator selected, a

statement that the parties have entered into an agreement with the mediator as to the rate and method of his or her compensation, and an affirmation that the mediator is qualified to serve as described herein.

- b. Upon receipt of a properly-filed notice that complies with this section, the Chairman will enter an order referring the case to the mediator.
- (2) The Chairman may assign one or more individuals qualified as described in the Texas ADR Act, TEX. CIV. PRAC. & REM. CODE § 154.052, to serve as mediator in the MSC. If any party objects promptly and with good cause to the mediator appointed, the Chairman will appoint another qualified individual to serve as mediator. For purposes of this section, an objection will be considered prompt if it is received by the Director within ten (10) days of the date of the order appointing the mediator.
- (b) In an MSC initiated under section D(2), the Mediator shall be assigned by the Chairman under the following procedures:
- (1) The Respondent may suggest the names of up to five (5) mediators who are qualified as described in TEX. CIV. PRAC. & REM. CODE § 154.052 to serve as the mediator.
    - a. The Chairman may appoint any one (1) of the suggested mediators whom the Chairman determines to be qualified and appropriate to serve as the mediator; or
    - b. If the Chairman, in his or her sole discretion, determines that none of the suggested mediators is qualified or appropriate to serve as the mediator, the Chairman shall enter an order under the procedure outlined in section E(5)(b)(1).
  - (2) The Chairman may assign one or more individuals qualified as described in the Texas ADR Act, TEX. CIV. PRAC. & REM. CODE § 154.052, to serve as the mediator in the MSC. If the Respondent objects

promptly and with good cause to the mediator appointed, the Chairman will appoint another qualified individual to serve as mediator. For purposes of this section, an objection will be considered prompt if it is received by the Director within ten (10) days of the date of the order appointing the mediator.

- (c) The order appointing the mediator will specify a time frame for the MSC.
  
- (6) **Confidentiality of Communications.** All communications in the MSC between or among the parties, and between each party and the mediator, are confidential as provided by the Governmental Dispute Resolution Act, TEX. GOV'T CODE § 2009.054. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties. It will not be filed or become a record in the disciplinary proceeding or in any litigation arising from the disciplinary proceeding. Notes taken during the MSC by the parties and/or the mediator shall be destroyed at the end of the process.
  
- (7) **Time Frame for MSC and Schedule for Disciplinary Action.** An MSC is not intended to delay the process, including the completion of discovery, the filing or hearings of motions, or the hearing of the action, except by order of the Chairman. Deadlines and settings in the disciplinary action may be extended only by motion to, and order of, the Chairman. An MSC does not suspend, extend, delay, or otherwise affect the deadline for the initiation of any de novo appeal to the district court pursuant to TEX. GOV'T CODE § 52.030.
  
- (8) **Outline of MSC Process.** The MSC will generally consist of an opening session with all parties present. Parties may be asked to give a brief history of the dispute and a list of issues that need to be resolved. Following the summaries, the mediator may ask clarifying questions and allow the parties to ask clarifying questions of each other. Then, in most cases, the mediator will meet with each party individually. Parties will be asked to suggest options that might resolve the dispute to the satisfaction of all. The mediator will facilitate communication to explore whether agreements can be achieved. Later, all of the parties may be brought together for additional joint sessions.

- (9) **Agreement to be Memorialized.**
- (a) Any agreement reached by the parties will be reduced to writing with the assistance of the mediator and signed by the parties before the end of the MSC. These writings may be informal in nature.
  - (b) Partial agreements that may affect the disposition of the disciplinary action (such as agreements concerning relevant facts) must be filed in the record of the disciplinary action.
  - (c) Parties may agree that the written agreement remain confidential and not become a part of the disciplinary action case file if there is no requirement of law to the contrary
  - (d) Whether a final written agreement reached through an MSC to which a governmental entity is a signatory is subject to required disclosure, is excepted from required disclosure, or is confidential, will be determined in accordance with applicable law.
- (10) **Conduct of Mediator.** The mediator is bound by the confidentiality provision of the Governmental Dispute Resolution Act, and will not communicate to the Board matters discussed with the parties in relation to the MSC. The mediator will report to the Board in writing whether the MSC resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.
- (11) Any motion requesting the appointment of a mediator, any objection to the referral of the matter to an MSC, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar documents as may become necessary or appropriate in the course of the MSC proceeding must be filed with the office of the CRCB.
- F. The Director of the CRCB shall:
- (1) coordinate the implementation of the policies set forth herein;
  - (2) serve as a resource for any training needed to implement the procedures set forth herein; and
  - (3) collect data concerning the effectiveness of those procedures.