

# MASSACHUSETTS

## RULE 16.4 ALTERNATIVE DISPUTE RESOLUTION

(a) The judicial officer shall encourage the resolution of disputes by settlement or other alternative dispute resolution programs.

(b) **Settlement.** At every conference conducted under these rules, the judicial officer shall inquire as to the utility of the parties conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance may be appropriate in the circumstances. Assistance may include a reference of the case to another judicial officer for settlement purposes. Whenever a settlement conference is held, a representative of each party who has settlement authority shall attend or be available by telephone.

### (c) Other Alternative Dispute Resolution Programs.

(1) *Discretion of Judicial Officer.* The judicial officer, following an exploration of the matter with all counsel, may refer appropriate cases to alternative dispute resolution programs that have been designated for use in the district court or that the judicial officer may make available. The dispute resolution programs described in subdivisions (2) through (4) are illustrative, not exclusive.

#### (2) *Mini-Trial.*

(a) The judicial officer may convene a mini-trial upon the agreement of all parties, either by written motion or their oral motion in open court entered upon the record.

(b) Each party, with or without the assistance of counsel, shall present his or her position before:

(1) selected representatives for each party, or

(2) an impartial third party, or

(3) both selected representatives for each party and an impartial third party.

(c) An impartial third party may issue an advisory opinion regarding the merits of the case.

(d) Unless the parties agree otherwise, the advisory opinion of the impartial third party is not binding.

(e) The impartial third party's advisory opinion is not appealable.

(f) Neither the advisory opinion of an impartial third party nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless

otherwise admissible under the rules of evidence. Also, the occurrence of the mini-trial shall not be admissible.

(3) *Summary Jury Trial.*

(a) The judicial officer may convene a summary jury trial:

(1) with the agreement of all parties, either by written motion or their oral motion in court entered upon the record, or

(2) upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all the parties.

(b) There shall be six (6) jurors on the panel, unless the parties agree otherwise.

(c) The panel may issue an advisory opinion regarding:

(1) the respective liability of the parties, or

(2) the damages of the parties, or

(3) both the respective liability and the damages of the parties.

Unless the parties agree otherwise, the advisory opinion is not binding and it shall not be appealable.

(d) Neither the panel's advisory opinion nor its verdict, nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Also, the occurrence of the summary jury trial shall not be admissible.

(4) *Mediation.*

(a) The judicial officer may grant mediation upon the agreement of all parties.

(b) The mediator selected may be an individual, group of individuals or institution. The mediator shall be compensated as agreed by the parties.

(c) The mediator shall meet, either jointly or separately, with each party and counsel for each party and shall take any other steps that may appear appropriate in order to assist the parties to resolve the impasse or controversy.

(d) If mediation does not result in a resolution of the dispute, the parties shall promptly report the termination of mediation to the judicial officer.

(e) If an agreement is reached between the parties on any issues, the mediator shall make appropriate note of that agreement and refer the parties to the judicial officer for entry of a court order.

(f) Any communication related to the subject matter of the dispute made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication to the full extent contemplated by Fed. R. Evid. 408. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

*Adopted effective October 1, 1992.*