

**CPR's AKC PROTOCOL**

**CPR's AKC FAST-TRACK MEDIATION AND ARBITRATION RULES OF PROCEDURE FOR CERTAIN DISPUTES IN THE AMERICAN KENNEL CLUB COMMUNITY**

**A. CPR's AKC FAST-TRACK MEDIATION RULES**

1. Initiation of Mediation

- a. CPR's AKC Fast-Track Mediation Rules may be adopted by voluntary agreement of the parties, with or without modification, before or after a dispute has arisen, either through a pre-dispute clause in a contract, or by entering into a dispute submission agreement.
- b. Either party, with the consent of the other, may initiate the mediation by notifying CPR in writing.

2. Mediator Appointment

- a. The mediator may be mutually selected by the parties from the list of AKC-designated Neutrals who have been approved and listed by CPR or, in the event the parties cannot agree, appointed by CPR from this list ("Mediator"). At the request of either party, CPR will act expeditiously to appoint the Mediator.
- b. If the Mediator determines that additional independent expertise is needed, the Mediator will make a recommendation to the parties for the selection of an independent expert to assist in the mediation.

3. Mediation Locale

- a. The Mediator may pursue conferences and meetings with the parties or either of them in person, telephonically or otherwise electronically.
- b. In those instances in which both parties request in-person mediation, the locale for mediation will be set by the parties. In case of a dispute, the Mediator will set the locale.

#### 4. Initial Conferences

- a. No later than two (2) business days after appointment, the Mediator will contact the parties for the purpose of conducting a conference to establish the time and place for the mediation, required attendees, and the submission of materials to assist the mediation.
- b. The Mediator may confer directly with either party prior to and during the mediation so long as both parties are afforded a similar opportunity to be heard.

#### 5. Mediation Initial Submissions

- a. Each party's submission shall be divided into the following parts:
  - i. A non-confidential submission, which shall include a short statement of facts and issues to be resolved as separate agenda items with an identification of the persons who control the resolution of each agenda item.
  - ii. A confidential submission, which, for each agenda item, shall state the party's goals. The confidential submission shall be provided to the Mediator directly and not exchanged with the other side.
- b. Each party's submission shall identify on the first page of the submission what, if any, particular expertise is needed to resolve the dispute.
- c. Each party's submission shall not exceed four (4) pages in total, unless expressly requested by the Mediator. The parties may supplement their respective submissions with limited documentation (not to exceed ten (10) pages) that has been referenced in the submissions.

#### 6. Mediation Session Submissions

Two (2) days prior to the mediation session, each party may submit a short additional mediation statement. Absent further direction from the Mediator or agreement of the parties, the additional mediation statement shall have three parts and not exceed four (4) pages in total:

- a. First part: joint statement of efforts to-date to resolve the dispute, listing points of resolution, points of division and last offers, stating whether such offers are outstanding or withdrawn;

- b. Second part: each party's short statement of position on every open agenda item;
- c. Third part: a confidential submission to the Mediator listing, for each party, the economic costs and business or other issues with respect to each agenda item, or any other information a party deems important for the Mediator to know.

## 7. Mediation Sessions

- a. To the extent feasible, mediation sessions will occur telephonically, on consecutive days.
- b. Sessions shall be confidential. Confidentiality shall cover all oral communications with or in the presence of the Mediator and all written communications.
- c. The submission to mediation under these rules shall be deemed an agreement by each submitting party to treat the mediation session and all reasonably connected communications as compromise or settlement negotiations entitled to protection of Fed. R. Civ. P. 408 and any similar state rule. No statement may ever be used in any other proceeding for any purpose whatsoever unless the parties expressly, in writing, waive confidentiality.
- d. The Mediator's role shall be to facilitate resolution of agenda items, and the Mediator shall have no power to impose a resolution.
- e. The Mediator shall have complete discretion and control over each mediation session, including the time period for each session and suspension of any session.

## 8. Termination of Mediation

- a. The mediation will be terminated if the parties achieve a resolution or, alternatively, if either the Mediator or one of the parties determines that, in its view, the mediation is not productive.
- b. If the dispute was not completely resolved, upon termination, the Mediator may recommend to the parties alternative methods for resolving all or part of the dispute. Such methods may include:

- i. arbitration of all or a part of the unresolved agenda items; and
    - ii. such other methods as the Mediator deems appropriate in light of the nature of the parties' unresolved agenda items. Such recommendations may include separation of agenda items for purposes of mediation, arbitration or other dispute resolution suggestions and ordering of the process by which each agenda item shall be resolved.
  - c. The Mediator's recommendations, if any, shall be non-binding on the parties. With respect to any such recommendations, no party shall be required to respond directly to the Mediator. The parties shall confer to determine if any such recommendation is acceptable and jointly inform the Mediator of their decision. If the parties accept the Mediator's recommendation and if the recommendation involves the sharing of information or positions developed during the mediation process, the parties shall be deemed to have waived confidentiality but only to the extent necessary to implement the recommendation.
9. The Mediator and the parties shall endeavor, in good faith, to hold a mediation session within sixty (60) days of notification to the parties by CPR of the Mediator's designation. Thereafter, the parties will proceed expeditiously to conclude the mediation.
10. The parties may pursue the mediation without attorneys.

## **B. CPR's AKC MEDIATION/ARBITRATION OPTION**

### **1. Mediator's Role in the Arbitration Option**

At any point during the mediation, the parties may mutually consent to submit any matter or portion thereof to arbitration, for final and binding resolution, before the same Neutral acting as the Mediator. The Mediator shall not be disqualified to serve as an arbitrator. By consenting to mediation/arbitration before the same Neutral, the parties will be deemed to waive any objection to such a procedure and accept such a procedure as a tool to break impasses on critical agenda items that may assist in the resolution of the overall disagreements between the parties. Any such consent shall be in writing.

### **2. Selection of Rules**

At the time of any such consent, the parties shall agree upon the rules that will govern the arbitration. The parties may agree upon any rules that they deem appropriate including use of some or all of CPR's AKC Fast-Track Arbitration

Rules set forth below or any other rules that are mutually agreeable. Such agreement shall be in writing and made a part of the consent to arbitration. The parties also may permit the Arbitrator to select the appropriate rules and procedure that will govern that arbitration.

3. This option is available only to the extent permitted by law.
4. Congruent Tracks

The parties also may select mediation/arbitration by using different Neutrals serving as the Mediator and the Arbitrator.

### **C. CPR's AKC FAST-TRACK ARBITRATION RULES**

#### 1. Initiation of Arbitration and Notice of Defense

##### a. Arbitration shall be initiated as follows:

- i. The party commencing the arbitration (the "Claimant") shall address to the other party (the "Respondent") a notice of arbitration. The notice of arbitration shall state which of the following subjects the dispute involves:

- Internal Club Disputes, *i.e.*, internal arguments over club bylaws and their application; *or*
- Dog Ownership Disputes, *i.e.*, private arguments over ownership that might implicate AKC's record of registration; *or*
- Inter-Club Cluster Event Disputes, *i.e.*, disputes between or among clubs in regard to cluster events.

- ii. The arbitration shall be deemed commenced as to any Respondent on the date on which the notice of arbitration is received by the Respondent.

- b. The Respondent shall have ten (10) days to serve its notice of defense(s) to the claim(s) set forth in the notice of arbitration.

##### c. As part of the stated claim(s) and defense(s), a party shall provide:

- i. adequate notice of all claims or defenses as applicable;
- ii. a separate section identifying the parties' relationship;
- iii. a separate section identifying the significance of the dispute to that relationship;

- iv. a separate section articulating the desired result and claim for relief;
  - v. a separate section listing names and addresses of all potential witnesses reasonably necessary to be called;
  - vi. a separate section identifying the location and the categories of all documents in the party's possession, custody or control that may be necessary and relevant to resolution of the dispute;
  - vii. a statement of any subject matter expertise the party believes is needed for a just resolution.
- d. Any notice required hereunder shall be provided by email (read receipt required) or overnight express delivery (receipt acknowledgement required).
- e. Any counterclaim shall be asserted with the notice of defense. The counterclaim and notice of defense to the counterclaim shall follow the procedures set forth above.

## 2. Selection of Arbitrator

- a. By selecting these rules of procedure, the parties are agreeing that a single Arbitrator shall hear and decide the dispute.
- b. No later than five (5) days after the issues have been joined through service of the last due notice of defense, the parties shall exchange lists of proposed Arbitrators in an effort to select an Arbitrator by mutual agreement. The parties may select the Arbitrator from the list maintained by CPR of AKC-designated/CPR-approved Arbitrators. The parties shall at the same time serve on CPR all notices of claims and defenses.
- c. No later than ten (10) days after the issues have been joined, the parties will notify CPR whether they have resolved the selection of an arbitrator by mutual agreement. In the absence of mutual agreement, both parties will be deemed to have requested CPR to select the single Arbitrator. CPR will select the Arbitrator to hear the dispute in the following manner:
  - i. CPR shall convene the parties by telephone to attempt to select an Arbitrator by agreement of the parties.
  - ii. If the parties do not agree on an Arbitrator, CPR will select the next available Arbitrator from its list of AKC-designated/CPR-approved Arbitrators.

- d. The Arbitrator shall commit to being Neutral and independent and to hold hearings and render an award within the time periods established by these Rules.

### 3. Arbitration Locale

- a. The parties shall mutually agree on the locale for arbitration no later than five (5) days after the issues have been joined through service of the last due notice of defense.
- b. In absence of agreement, the Arbitrator shall determine the appropriate locale based on the contentions of the parties and the circumstances of the arbitration, and the arbitrator's decision shall be final and binding.
- c. The designation of the locale shall not restrict the Arbitrator's direction of written, telephonic and other electronic submissions in lieu of or to supplement in-person conferences and hearings.

### 4. Pre-hearing Conference

Within five (5) business days of appointment, the Arbitrator shall hold a pre-hearing conference. The objective of the conference will be to discuss all elements of the arbitration with a view to planning its future conduct. Matters to be considered in the pre-hearing conference may include, but are not limited to, procedural matters such as the time allotted to each party for presentation of its case and for rebuttal, the need for expert witnesses and how that testimony would be presented, identification and narrowing of issues, stipulations of fact and admissions, document authentication, possibility of settlement and any other matter which the Arbitrator or parties believe is relevant. The Arbitrator may hold one or more conferences in the Arbitrator's discretion.

### 5. Limited Discovery

- a. Except as otherwise ordered by the Arbitrator, discovery shall be limited to the exchange of documents.
- b. Upon date(s) established by the Arbitrator, both parties will serve on the other:
  - i. all non-privileged hardcopy and electronic documents that they reasonably believe are relevant to any issue to be resolved in the arbitration;

- ii. a privilege log with a sufficient description so that the assertion of privilege can be evaluated appropriately by the non-producing party and the Arbitrator;
- iii. in addition, each party may serve a list of particular categories of documents needed with respect to the dispute, which list shall attempt to be as specific as reasonably practicable, and each party shall then serve in response a statement of whether the initial production included the requested documents and, if not, whether the production will be supplemented or whether there is an objection thereto;
- iv. any documents not produced two (2) weeks prior to the arbitration hearing may not be used by the producing party at the hearing, except as rebuttal documents which may be admitted in the discretion of the Arbitrator.

## 6. Neutral Expert

- a. If the Arbitrator deems it appropriate, the Arbitrator may appoint an independent neutral expert to assist the Arbitrator in gathering facts necessary to a full and fair resolution.
- b. The neutral expert shall render his/her report in writing with copies to each party.
- c. The cost for the neutral expert shall be shared by the parties.

## 7. Hearings

- a. Hearings may be held or witnesses presented telephonically or by video conference or such other manner as the Arbitrator deems appropriate and may direct.
- b. The Arbitrator may impose a timed hearing with equitable time allotted to each party to present its evidence. In any timed hearing, a party may present a witness or documentary evidence on direct examination through an affidavit or through an offer of proof or testimony. The Arbitrator may also limit the number of experts to be presented by the parties.
- c. The Arbitrator shall determine the appropriate procedures for the arbitration bearing in mind that the parties selected fast-track arbitration to achieve a fast, equitable solution without the formalities required by judicial processes.



- d. The parties shall produce such evidence as the Arbitrator deems necessary to understand and determine the matters in dispute. The Arbitrator shall have the power to subpoena witnesses or documents upon request of either party or as deemed necessary by the Arbitrator in accordance with applicable law.
- e. Unless the parties have otherwise jointly consented, hearings will commence within sixty (60) days of case commencement and will be closed within thirty (30) days thereafter. The Arbitrator will make every effort to schedule each side's presentation of evidence on consecutive days.
- f. If the parties have related agenda items pending in mediation, at the request of either party, the Mediator (if separate from the Arbitrator) may attend the arbitration sessions.

## 8. Mediation

The Arbitrator may refer any portion of the dispute to mediation before rendering an award. Mediation will be conducted in accordance with CPR's AKC Fast-Track Mediation Rules.

## 9. Award

- a. The award will be rendered within fourteen (14) days of the close of hearings.
- b. The Arbitrator will render a written reasoned award as to each matter submitted to arbitration ("Award").
- c. Service of the Award on both parties shall be within the time fixed by the agreement to arbitrate or within the time fixed by the Arbitrator.
- d. The Award will be final and binding upon the parties to the arbitration and each of them.

## 10. Costs

All costs shall be borne equally by the parties, but the Arbitrator may divide costs as the Arbitrator deems appropriate as part of the Award. Costs include the costs and fees charged by CPR, counsel fees and any expert fees.

11. The parties may pursue the Arbitration without attorneys.
12. All fact-based submissions to the arbitrator, whether in person, in writing, or electronically submitted, shall be sworn to as being truthful, accurate and relevant.

**D. COSTS & FEES TO THE PARTIES AND RELATED MATTERS**

1. CPR is providing this service to the AKC community at a reduced cost.
2. CPR's filing fee will be \$650 (non-refundable) and will be split equally between the parties.
3. The fees and expenses of the Mediator and the Arbitrator also will be equally shared between the parties.
4. The hourly fees charged by the Mediators and Arbitrators are set by them individually and are on file with CPR.
5. If the Neutral or CPR expects a case to exceed four (4) hours, the Neutral or CPR may direct the parties to deposit with CPR, in advance, an amount (as determined by CPR) split evenly between or among the parties, against which the Neutral's fees will be paid as the case progresses.

## **The AKC Mission**

The American Kennel Club is dedicated to upholding the integrity of its registry, promoting the sport of purebred dogs and breeding for type and function.

Founded in 1884, the AKC and its affiliated organizations advocate for the purebred dog as a family companion, advance canine health and well-being, work to protect the rights of all dog owners, and promote responsible dog ownership.

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The American Kennel Club is proud to serve the fancy and the sport by providing this *Working It Out Guide*. For further advice, you may contact:

Club Relations Internal Club Disputes -- [clubrelations@akc.org](mailto:clubrelations@akc.org)

Cluster Event Disputes – [eventplans@akc.org](mailto:eventplans@akc.org)

Dog Ownership Disputes -- [customerregistrationsupport@akc.org](mailto:customerregistrationsupport@akc.org)