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Advanced Strategies for Conflict Resolution Through Mediation and Ombuds Programs

Dana L Dombrowski
Snap-on-Tools Company, LLC
Kenosha, Wisconsin

Joyce Mazero
Polsinelli / Certified Mediator
Dallas, Texas

Brian Balconi
Balconi Mediation Services
Marshfield, Massachusetts

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I. Introduction

Mediation is a confidential process in which a neutral third party facilitates communication and negotiation between disputing parties to assist them in reaching a mutually acceptable resolution. An ombuds program, as applied to franchising, is a confidential, impartial, independent, and informal resource designed to help franchisees surface concerns, explore options, and resolve issues through constructive communication that uses facilitated and coached conversations.

So, what's the difference between an ombuds program and mediation? An ombuds program is an internal, informal dispute-management resource designed to address concerns early and also potentially identify systemic issues, while mediation is a structured negotiation process conducted by an external neutral to resolve a specific dispute typically after the dispute has matured. In franchise systems, mediation and ombuds programs play a critical role in managing disputes in a manner that preserves ongoing business relationships, manages power imbalances, reduces litigation costs, protects the brand, and promotes healthier franchise systems.

II. Unique Nature of Franchise Conflict Resolution

In a typical dispute outside the franchising context, the parties' monetary positions often fall along a single continuum. For example, a plaintiff may claim that the defendant owes $1 million, while the defendant initially maintains that it owes nothing. Mediation in such cases frequently involves narrowing the gap between these positions, with the parties ultimately settling on a figure somewhere between zero and the amount demanded.

Franchise disputes, however, often present a different dynamic. In a franchise termination dispute, for example, the franchisee may claim damages for lost business value and fees paid to the franchisor, while the franchisor may assert claims for unpaid royalties, lost future royalties, or liquidated damages. In this scenario, the parties are not merely negotiating a single-sided monetary demand. Rather, each party may believe the other owes it substantial damages, placing the dispute on opposite sides of the financial spectrum. The negotiation therefore may involve reconciling claims that extend in opposite directions from zero, often further complicated by non-monetary issues such as non-competition obligations, confidentiality provisions, and the use of intellectual property.

As discussed below, both legal and business considerations make franchise disputes distinct. Understanding these dynamics can be critical to achieving resolution through mediation.

Mediation offers the benefit of having the parties exercise control over the outcome (including using creative solutions), reduce risk, save time and money on legal fees, and confidentiality. It can also preserve the relationship between the parties. As it relates to franchise disputes, pre-litigation mediation provides for a final attempt to resolve the dispute before it potentially has to be disclosed in the Franchise Disclosure Document

(FDD). Franchise Agreements often have a mandatory mediation clause, which requires mediation before filing a court action or arbitration. See examples in Exhibit A. The dynamic of mediation can be different depending on whether it is contractually required or proposed voluntarily by the parties.

Franchise disputes are typically business disputes wrapped in legal claims. In order to resolve the dispute, it's helpful to understand the context of the business dispute. The franchisor-franchisee relationship is symbiotic with long term financial and emotional connections, often with the franchisee's life savings invested. These disputes can appear to have irreconcilable differences, but like a troubled marriage, the deeply rooted issues should be explored to determine if it's possible for the parties to continue to live together or go their separate ways.

In a dispute, it's also helpful to understand power dynamics. Mediators are trained to understand these dynamics so that they can be managed for informed and productive discussions. Franchisors typically have greater power due to more resources, and more information available to it. The risk tolerance balance can go either way. Franchisors may be concerned about the implications of a judgment against it but may have more stamina to wait out the issue. Franchisees, on the other hand, may feel that they have nothing to lose in pursuing the matter.

Franchise disputes also must be viewed through a larger lens than just the franchisor and that particular franchisee. Resolutions may involve systematic issues such as those involving the advertising fund or supply chain. Regardless of any confidentiality provision in a settlement agreement, franchisors will be concerned about other franchisees learning of the resolution and expecting the same resolution, as well as possibly being required to disclose the resolution in the FDD. Also relevant to the individual dispute and the potential resolution is the unit economics of the system as a whole, as well as the size and growth of a system.

III. Understanding How and When to Engage in Mediation

A. Timing is Everything: Key Considerations for Mediation in Franchise Disputes

Timing is critical.

If a mediation takes place too early, the parties may not have a sufficient understanding of the strengths and weaknesses of the other sides' positions in order to make realistic demands and offers. On the other hand, if mediation occurs after the parties have completed most of discovery, the parties' emotional and monetary investment will have likely solidified their positions and make settlement more difficult. Alternatively, franchisor and franchisee may have "litigation fatigue" and may be more pre-disposed to settlement.

There is also that middle ground where some discovery or exchange of information has occurred, but the parties have never really talked live about the dispute and are unfortunately working with incomplete information and perhaps, mistaken assumptions

about the case. This is even more the case where a prevailing attorneys' fees provision applies.

If timing is not optimal because the mediation took place too early, as driven by contract provisions or court order, it is advisable to keep the mediation open and reconvene it later in the proceeding. Once information has been exchanged that allows each party to assess the strengths and weaknesses of their cases, mediation is likely to be productive.

1. Factors Indicating It May Be Too Early for Mediation

a) Lack of Information and Insufficient Data Gathering

Aligning on the issues in mediation is important, and a constructive pre-mediation conference with counsel will help create clarity around such issues. Without alignment, the mediation should be postponed.

Pre-conferences are also essential information- gathering tools. In such meetings, each counsel and their client typically reveal their interests and goals, which helps the mediator evaluate that information in advance and compare it to the record to determine how realistic the desired outcomes are.

b) Unresolved Internal Personal or Personnel Issues

Personal issues (including family or marital issues) or personnel issues (employee theft, harassment or turnover) can affect a party's perspective on his or his case and these issues either should be resolved prior to mediation or made known to counsel, parties and mediator so these conditions can be taken into consideration in crafting any resolution.

c) Absence of Good Faith Negotiation/Willingness to Engage

At a very early stage, some attorneys convey that they do not believe in the benefits of mediation and see it as just another mandatory step to get to court. These lawyers normally demonstrate little respect for the mediator's work and do not value the time the mediator invests in preparing for the mediation. In these circumstances, the mediator may need to determine if the mediation should proceed at all (if that is an option). In these cases, the mediator should review the purpose and benefits of mediation with the parties and discuss how letting go of any biases against it and fully engaging is the only way to get value out of the proceeding.

d) Market and Economic Conditions and Impact of External Factors

The parties should evaluate how prevailing economic conditions may affect the urgency and tone of mediation discussions. In a situation where a market is devaluing because of a poor performing franchised business, both parties need to urgently consider what is necessary to preserve market competition and brand reputation.

2. Factors Indicating It May Be Too Late for Mediation (but mediation should still be conducted)

a) Escalation to Legal Proceeding and Entering Litigation

It is important to evaluate the impact of litigation on the potential success of a mediation including the scheduling of trial, ongoing discovery proceedings and the costs. At the beginning of litigation, the parties may still feel they do not know enough about each other's case or positions to realistically discuss a settlement. Farther into litigation, positions can become rigid and the parties and counsel may get to a point where they feel they cannot turn back or reverse course because of their investment into the litigation.

b) Time Sensitivity and Urgency and Impending Deadlines and Decisions

In addition to the time and cost pressures of litigation, the parties may be impacted by the expiration of leases and franchise agreements or concern over the potential renewal or non-renewal of a lease or franchise agreement. In a dispute, the franchisee, in particular, may fear retribution by the franchisor (i.e. in the case of a franchise agreement coming up for renewal) or be worried about continued investment in the business (i.e. in the case of a lease coming up for renewal).

c) Impairment of Relationships and Deterioration of Trust

As litigation proceeds, positions may harden and emotions may grow out of control, creating deep mistrust between the parties leading to irreparable relationship damage. This will also make it more difficult for the parties to conduct themselves professionally and with respect in a mediation proceeding.

d) Organizational Culture and Alignment of Values

> Both parties need to consider whether they have organizations that foretell whether each will come to the mediation with mutual respect and aligned business values by assessing their respective organizations and whether they encourage open communication and collaborative problem-solving.

B. Selection of Mediator

In the early 2000s, one of the authors attended a mediation as a representative of a franchisor in a dispute. The mediation (then referred to as a "Settlement Conference") was with a U.S. Magistrate Judge. These settlement conferences were utilized in order to reduce the backlog of cases. Accordingly, the Magistrate had a strong incentive to "encourage" parties to settle their cases.

In the mediation private session, the Magistrate raised his voice, pointed his finger and aggressively proclaimed, "You are going to lose this case. I will write it down right now. You will lose." (yes, I remember this verbatim.) My view of the case was quite different. I believed that we had a strong case. So, we decided to take the case to trial. At trial, we were victorious on all counts with an award of significant damages and attorney fees.

Following the above experience, I had a greater appreciation for the old joke that mediators tell each side in the private session that they have a weak case and are going to lose in court. Both sides are going to lose! This story illustrates perhaps the most important trait of a mediator, which is credibility. A mediator must have the trust and credibility of each side, both the parties and the lawyers. A mediator should help the parties walk through strengths and weaknesses of their case, but if the parties or their counsel get even a whiff of a mediator exaggerating weaknesses or not otherwise being fully transparent the mediator will not be effective. Suffice to say, the above Magistrate did not have credibility with me and after that experience I was even more sensitive to this credibility issue. In franchise disputes, having subject matter expertise in both franchise law and the business of franchising will create credibility and also assist in proposing creative win-win solutions.

When considering a mediator, it's helpful to understand the difference between an evaluative and facilitative style of mediation. The above example clearly falls with the evaluative style and is in fact evaluative to the extreme. An evaluative mediator will provide candid feedback on the merits of the parties' positions, including strengths, weaknesses and potential litigation outcomes. An evaluative style can be especially beneficial for a litigator in managing unrealistic expectations of a client.

With a facilitative approach, a mediator will focus more on guiding the conversation and asking questions to assist the parties reach their own conclusions. For example, by asking questions and exploring scenarios, mediators may "reality test" a party's arguments. It's important to note that many mediators are capable of using both a facilitative and, when appropriate (e.g., asked by a party) evaluative approach. When

handling complex franchise disputes, evaluative mediation will require the mediator to be well-versed in franchise law. When choosing a mediator, a litigator may want to consider to what extent the mediator is or will be facilitative, evaluative or both.

One commentator surveyed experienced franchise lawyers and found that qualities they prefer in a mediator include stamina, flexibility, dedication to the process, deference to the parties' interest, creativity, and other qualities.[1] These attributes suggest that the most effective mediators combine persistence with adaptability, remaining committed to the process while helping the parties think creatively about potential resolutions.

Choosing a mediator is not merely an administrative step in the dispute resolution process. It is a consequential decision. The mediator sets the tone, influences how parties evaluate their positions, and can help the negotiations move toward resolution. By selecting a mediator with the right experience, style, and credibility with the parties, counsel can meaningfully increase the likelihood of a productive mediation and a successful outcome.

C. Preparing For Mediation

Lawyers play a vital role in mediation, guiding their clients through various stages of the process and facilitating resolution. By preparing clients, framing discussions around interests and goals, and focusing on collaborative outcomes, they can help franchisors and franchisees achieve lasting and satisfactory agreements. The following items are critical to preparation that is likely to yield a satisfactory result.

1. Conducting a Thorough Review of the Relevant Documentation

Before mediation, lawyers should conduct a detailed review of the franchise agreement and any related documents and conduct client and any other necessary non-party interviews. Understanding pertinent rights, obligations, and terms is crucial for effectively assessing the client's case, and potential strategies for mediation including identifying provisions that could impact the mediation, such as dispute resolution clauses, termination rights, non- renewal rights, obligations regarding payment terms, and other operational requirements. Counsel should help the client compile relevant documents, including financial records, communication history, and evidence supporting his or her position. This will provide a strong foundation for discussions during the mediation.

2. Pre-Mediation Meetings

In addition to a review of applicable documentation, counsel must understand and assess the client's position, goals, concerns and underlying interests and give the client information about the purpose and structure of mediation proceedings. To facilitate the foregoing, it is advisable to conduct pre-mediation meetings to determine what the clients want to achieve and their must-haves versus wish-list items. The client's goals in

[1] Arthur L. Pressman, *ISO the Perfect Mediator; Other Characteristics Considered*, The Franchise Lawyer 16, 18 (Fall 2017).

mediation may be very different than counsel's plan for litigation. These differences need to be discussed to ensure that the client's goals are properly reflected in any mediation presentation.

It is also important to conduct pre-mediation meetings with the mediator to ensure the mediator understands the client's position. Challenges in mediation occur when the mediator does not understand what the parties really want because pre-mediation conferences have not occurred or counsel is withholding information. Money is sometimes not the primary issue and additional support, accommodations or apologies can go far in facilitating a settlement. A mediator will never know unless he or she has the opportunity to probe the facts of the case and the parties' emotions.

3. Strategic Use of Information and Aligning and Expressing a Cogent Rationale for the Client's Position

In addition to gathering and evaluating the relevant documentation, counsel should ensure that the client's offer or counteroffer can be justified in rational terms. To do otherwise will just prompt demands and counters without a reasonable basis, derailing the mediation effort. This often happens when counsel and the client have not thoroughly read their own documents or are parroting demands from higher-ups that are not present, and are based more on emotion than fact.

4. Setting the Tone for Mediation

The lawyer should provide client-focused guidance to assist the client in understanding the importance of being calm and respectful and open to the exchange of communication during mediation. To do this the lawyer can role-play potential scenarios with the client to prepare for discussions so that the client can express frustrations constructively. The lawyer should encourage a tone of cooperation rather than confrontation and model this behavior to their clients during mediation.

A franchisee might practice explaining the impact of insufficient training on sales without assigning blame to the franchisor, facilitating a more productive dialogue. A franchisor's lawyer might open the dialogue by acknowledging the franchisee's contributions to the brand and the desire to work together for improvement, setting a collaborative tone for negotiations. Highlight the importance of preserving the business relationship and brand reputation in discussions. Lawyers can remind their clients that finding a resolution benefits not only individual parties but also the larger franchise network, fostering goodwill and potentially avoiding future disputes.

It is also important to have present party representatives with decision-making authority. Absence of decisions-makers or, at least those easily available by phone or online, will cause unnecessary delays in the settlement process and derail the parties' momentum – especially if counsel and the parties have agreed on an abbreviated mediation proceeding.

5. Articulating Interests and Goals

It is important to help clients articulate not just their positions but their interests, encouraging them to express concerns that may not be immediately apparent.

In addition to pre- mediation conferences with the mediator, counsel can best articulate the client's story is in the mediation statement. Unfortunately, mediation statements tend to read like trial briefs and omit any information about problems with evidence or other challenges the party has with its case. Some mediation statements are regurgitations of the pleadings and even just attach motions and other pleadings. This reflects the counsel's and the client's unrealistic viewpoint of the case, normally accompanied by unrealistic demands and rigidity. This discourages candid discussion about the dispute, even though lawyers clearly know that a mediator is obligated to keep information confidential and will not, without permission, disclose information to the other side. A candid discussion with counsel about his or her case is paramount in order for the mediator to provide a fair evaluation of the case and foster a fair settlement. If counsel desires and it fosters a more transparent disclosure of information to the mediator, counsel can request that his or her mediation statement not be shared with the other side.

It also helps if counsel has confidence in the evaluative skills of the mediator and confirms that to his or her the client. If the mediator senses rigidity or lack of support by counsel for mediation, the mediator will likely seek a separate, candid discussion with counsel to loosen the rigidity of counsel's approach to the mediation.

In the opening session in a mediation the parties will have the opportunity to speak to each other and address their respective goals and interests. The mediator will discourage and counsel should avoid using this time to aggressively argue their case. This is the time for both counsel and the client to address the pertinent issues and the client's goals for the proceeding. Often new information about a party is revealed during the opening session which can be helpful to the lawyers, mediator and the negotiating process.

6. Identifying Creative Potential Problem-Solving Solutions

It is important to prepare clients to explore flexible and creative solutions that can satisfy both parties' interests. Mediation is not about winning the case – it is about finding an acceptable resolution. Clients should be invited to actively consider the design of a potential solution fostering a sense of ownership in the client over the process. Creative solutions may include customized payment plans, new protocols for communication, new territorial boundaries, additional training, royalty relief, increased marketing assistance and buy-out of the franchised business.

It is equally important for each party to know their best, worst and most likely alternatives if a mediation fails. Sometimes this is referred to knowing your BATNA (Best Alternative to a Negotiated Agreement), WATNA (Worst Alternative to a Negotiated Agreement)and MLATNA (Most Likely Alternative to a Negotiated Agreement). Knowing these alternatives strengthens the client's bargaining power and his or her confidence in decision- making, making it easier to walk away from unfavorable terms, clarifying what the client would be willing to accept and serving as benchmarks against which potential

agreements can be assessed. The mediator can assist in evaluating the strengths and weaknesses of each alternative in a safe environment of confidentiality and neutrality. It is also important to consider the other party's alternatives and by doing so the parties should be motivated to weigh advantages of achieving an agreement instead of accepting less advantageous options.[2]

One of the more difficult challenges for a mediator is facilitating a discussion solely about monetary relief when the parties are not negotiating within a reasonable range of each other. Sometimes that range looks unreachable. A mediator can prompt a discussion about a more reasonable range For example, if a party believes that the demanding party is not negotiating in good faith and cannot articulate an understandable rationale for his or her demand, the responding lawyer should suggest to the mediator a number, which if offered by the demanding party, would suggest the demanding party is serious about getting to a resolution. This will give the parties a sense of the real negotiable range. If the range is still unrealistically broad, counsel can suggest to the mediator that his or her client would be willing to go to a certain number if the other party were to make a similar move, narrowing the range to one in which the parties can realistically negotiate. This is called bracketing and can be very effective in getting parties to an agreed number.[3] As part of any preparation and in connection with a discussion about the WATNA, counsel should have a discussion with the client about the potential outcomes if the case does not settle, providing the lawyer's objective risk assessment including weaknesses in evidence, the opposing party's case's strengths and the risk of a poor outcome at trial. The unknowns of even the best planned proceeding should be discussed with the client, including the stress, time and monetary drain and disruption of the lives of everyone involved.

If the client lawyer waits until mediation and client receives what is perceived as a surprising low offer, the client may blame his or her lawyer and be resistant to compromise. A candid pre-mediation assessment should result in a walk-away number that is realistic and grounded in legal risk and not emotion. The client lawyer should also expand his or her thinking beyond monetary remedies and think about other approaches to settlement including operational, territorial and marketing options

A mediator may have expected this to have already been explained by a client lawyer – but if the counsel and the client's position is rigid, it is likely not the case and the mediator will likely remind the parties of what happens if a party loses and if the losing party is required to pay the other party's attorneys' fees and damages. Or, if a party wins and the other side appeals and/or has no readily accessible assets to execute on, or files bankruptcy, or other exigencies, like having important witnesses becoming unavailable or undependable.

IV. Best Practices for Mediators

[2] Conclude ADR Team, *7 Key Insights on WATNA and BATNA for Effective Negotiation* (Sept. 1, 2025), https://blog.concludeadr.com/7-key-insights-on-watna-and-batna-for-effective-negotiation/.

[3] Denise Madigan, *Bracketing: An Alternative Mediation Technique*, Advocate Magazine (July 2023).

Charlie “Tremendous” Jones famously said: “You will be the same person in five years as you are today except for the people you meet and the books you read.” For franchise mediators, what makes life interesting is the franchisors, franchisees and their counsel that they meet, and the mediation statements they read.

A. Ground Rules

Mediators begin the session with the ground rules, even if the parties and their lawyers are regular consumers of mediation. The ground rules may include the below.

An important tenet of mediation is the principle of self-determination. The parties retain the ability to decide whether to settle and on what terms. This is true regardless of whether the mediation is required by a contract (e.g., the franchise agreement) between the parties or ordered by the court. Mediators like to point out that if the case moves forward to court or arbitration, the outcome is uncertain, perhaps like “rolling the dice.” But in mediation the parties have control of the outcome, which can include creative solutions that cannot be awarded by a court or arbitrator.

Next, the mediator explains the role of a mediator. The mediator is not a judge and won’t take sides. Obvious to the lawyers in the room, but it’s also important for the mediator to emphasize that he or she is not the parties’ lawyer. The mediator may ask probing questions and may play the role of devil’s advocate but should assure the parties that the mediator is also gently pushing the other side by playing this role in a private session with them.

Confidentiality is an important aspect of mediation. There are two layers of this confidentiality that must be clearly articulated. First, as with other discussions for the purpose of possible settlement, the mediation itself is confidential. The second layer of confidentiality relates to the discussions when the mediator is meeting with each side separately in private sessions. The mediator may choose one of two default positions: 1) the mediator will only relay information from the private session that the party specifically authorizes; or 2) the mediator may relay all information from the private session unless the party specifically states otherwise regarding a particular piece of information. In this author’s opinion, the latter is a more workable process.

B. Safe Environment

A good mediator is able to establish a safe environment for open dialogue and exchange of information. This begins with the opening general session and is crucial if there are opening statements by the parties.

Regarding exchanging information or documents, sometimes it’s the lawyers that object and sometimes it’s the parties who object. The litigator may be reluctant to provide the other side with “free discovery” while a party may not want to share the information because they don’t trust the other side and how they will use the information. This can be especially true if the parties are far apart and don’t have a high degree of confidence that the case will be resolved in mediation. A good mediator will acknowledge the concerns

and ask questions to highlight why sharing the information might be beneficial, and suggest solutions for alternatives.

1. Active listening techniques

One hallmark of an effective mediator involves active listening. Lawyers are trained to apply logic; gather the facts, analyze the law and reason through possible outcomes. While these skills are certainly important in mediation, a truly effective mediator must go further to seek to understand and appreciate feelings and perspectives of the parties, even when these views may not align with the law. These human elements can be just as crucial to achieve a resolution as legal reasoning, and in many cases, even more so.

An effective mediator empathizes with the party, summarizes and in some cases reframes the statement. The easiest way to understand this is with the following hypothetical from a private session with a franchisee and its counsel (albeit simplified for illustration purposes):

Franchisee: "The franchisor stole money from the ad fund."

Mediator: "Tell me more about this."

Franchisee: "The franchisor used ad fund money to do A, B and C."

Mediator: "I understand that you are angry that the franchisor used ad fund money in a way that was not authorized."

In the above exchange, the mediator assisted the franchisee in clarifying the issue, reframed it in a more precise and less inflammatory manner, and summarized it so that the franchisee feels that they have been heard. The mediator can also use this characterization in the private session with franchisor to move the discussion forward, and not use the accusatory "the other side said you stole their money."

2. Positions vs. Interests

In negotiations and mediation, a party's position reflects what they say they want, whereas their interests reveal the underlying reasons or needs driving that position. This concept was first popularized in 1981 by the book Getting to Yes.[4] Focusing on interests, rather than entrenched positions, allows for more creative and mutually acceptable resolutions. For example, a franchisor may be reluctant to waive a particular provision in a franchise agreement. That is the position. But further inquiry by the mediator may highlight that the interest is unrelated to the franchisee in this particular dispute. Instead its interest relates to the franchise system as a whole and ramifications to its relationship to other franchisees. Once the mediator discovers this, it will open the door to finding a solution that satisfies the franchisee but also meets the interests of the franchisor.

[4] See, Roger Fisher, William Ury & Bruce Patton, *Getting to Yes 42* (3d ed. 2011). Also see Brian Balconi & Michael Sturm, *Applying the Principles of Getting to Yes to Franchise Mediations*, The Franchise Lawyer (Fall 2025).

3. Dealing with Emotions

As described above, the position that a party takes in a mediation is not limited to a logical analysis of the law. Accordingly, an attorney, trained in logic, may become frustrated when the other side does not accept what they believe is a very fair offer. Parties are driven by their own emotions, often the result of a spiraling negative relationship with the other side, which is now punctuated by what the party believes is an offensive offer (far too low or too high). The mediator's role is to understand where the emotions are coming from, and use this information to de-escalate the situation.

4. Mediator's Tools

Some tools that a mediator may have to assist in the resolution include the following: offer potential solutions (without inserting themselves too much), review litigation risks with parties and their counsel, and as discussed above, review each parties' BATNA (Best Alternative to Negotiated Agreement), bracketed proposals and a mediator's proposal. The latter two mediation tools are described below.

A bracketed proposal may be used when the negotiations have stalled or there is a large gap between the parties' positions. It works as follows: Party A proposes that it will move to a specified dollar amount if Party B moves to another specified dollar amount. For example, if the parties' most recent offers are $50,000 (Party A) and $1 million (Party B), Party A might propose moving up to $200,000 if Party B moves down to $600,000. If accepted (or commonly met with a counterproposal), this approach has the potential to more promptly significantly narrow the gap between the parties.

A mediator's proposal is another tool of the mediator. This is typically used after the mediator has had substantial discussions with the parties and meaningful offers have been exchanged. The mediator proposes a settlement amount to both sides. This figure is not the mediator's evaluation of the merits of the case, but rather the mediator's judgment as to the point at which the parties may realistically reach agreement. Each party then privately communicates to the mediator a simple "accepted" or "rejected." If both parties accept the proposal, then a settlement is reached. The mediator informs the parties only whether there is agreement or no agreement, without disclosing either party's response. As a result, if a party rejects the proposal, it has no way of knowing whether the other side accepted or rejected it. This process allows parties to accept the proposal without concern that their response will later be used against them as a floor or ceiling in further negotiations if the proposal is not accepted by both sides.

V. Best Practices for Lawyers in Franchise Mediation

Mediation in the franchise context can be a complex undertaking, and lawyers play a pivotal role in guiding their clients through the process. In addition to the points addressed in this paper concerning Preparing for Mediation and Selecting a Mediator, the following are a few additional best practices for effectively representing clients during franchise mediation:

A. Conducting Pre-Mediation Strategy Sessions

In addition to conducting pre-mediation meetings to educate the client on the mediation process noted above, use these sessions as an opportunity to further refine the client's goals. Counsel needs to help the client to focus on underlying interests rather than fixed positions. Understanding what they truly seek (e.g., improved communication, a more favorable payment plan) can open pathways to negotiation. Lawyers should work with clients to clearly define the client's mediation objectives. Whether it's financial compensation, re-establishing a working relationship, or negotiating new terms—having clear goals helps focus the discussions.

This includes conducting mock negotiations or role-playing sessions to practice responses and develop persuasive arguments, helping clients become more comfortable with the process. This also includes re-evaluating the BATNA, WATNA and MLATNA options described above.

B. Utilizing the Mediator's Role

The mediator can be used to bridge gaps in understanding and not just convey offers and counter offers. The lawyer can use the mediator to objectively highlight weaknesses in the case to his or her client and also deliver thoughts about risks, costs and potential outcomes in litigation to the other party.

C. Transition from Trial Lawyer to Negotiator

It is important that the lawyer adopts a mediation mindset, transitioning from trial lawyer to negotiation advocate requiring a major change in perspective. The lawyer should recognize that the mediation is not a mini-trial or just an opportunity for discovery. The mediator is not a judge and there is no need for aggressive openings, inflammatory statements or personal attacks that will polarize the parties further. Further, it forces the mediator to take time to de-escalate the increased tension instead of negotiating.[5]

If there is an opening in the general session, it should be brief, respectful and focused on the risk and opportunity for settlement. The audience is the opposing party and it should be the client lawyer's objective to have the opposing party want to accept the client's offer.

D. Clarifying Terms and Agreement Drafting

Drafting concise and clear agreements that encapsulate negotiated terms, responsibilities, and timelines is essential for both parties.

The mediator should review and be involved in the preparation of the terms of the settlement agreement to avoid the parties realizing they left out important terms and to prevent buyer's remorse later, both of which can derail completion of the settlement

[5] Lori Adelson, *The Mediation Playbook: Three Keys to Preparing your Client For Mediation – and Three Mistakes to Avoid* (Nov. 20, 2025), https://www.law.com/dailybusinessreview/2025/11/20/the-mediation-playbook-three-keys-to-preparing-your-client-for-mediationand-three-mistakes-to avoid/?slreturn=20260313094645.

process. Even better the lawyers should come to the mediation with a form of settlement agreement that can be adjusted at the mediation.

E. Follow-Up Procedures

The lawyers should provide a plan for accountability and establish follow-up procedures to ensure both parties adhere to the settlement agreement and address potential new issues that may arise. The client lawyer should counsel the client on next steps after mediation, including evaluating the agreement and preparing for future interactions.

Even if the mediation does not result in a settlement, the work done in mediation is valuable. If the parties can take a breath, and stand back and objectively evaluate their claims, the first mediation can form the basis for a productive second mediation or continued settlement discussions. The experience of the first mediation should provide the parties and their counsel with a basis for more objectively evaluating the benefits of the process and the risks of not settling.

After mediation, it is also prudent to hold a debrief with the client to discuss what worked well and what could be improved for future disputes. This reflection helps build confidence and improve strategies.

VI. Common Pitfalls for Mediators

A. Lack of Trust and Credibility

Arguably the biggest pitfall for a mediator is failing to establish and maintain trust and credibility with the parties and counsel. Mediators are human and likely have their own ideas of the structure or the details of how the matter should be resolved. But the mediator is, of course, not a party to the dispute. Each party has its own views of the case, tolerance for risk and other unexpressed motivations. Lawyers and parties may become frustrated if the mediator is overly invested in a particular resolution. An effective mediator will ask questions of the parties and will offer their own views if the parties ask for it or are otherwise receptive to potential resolutions.

B. Showing Bias

This first step in reducing or eliminating bias is to recognize that all humans are shaped by their experiences and, therefore, as it relates to mediators, they bring these biases into the mediation. The biases can be furthered by the mediator's views of the parties (or counsel) as to their likeability. An effective mediator puts aside any personal biases in order to be a neutral facilitator. If the mediator is not able to set aside any personal biases, it will come across to the parties.

Sometimes mediators are asked: "Would you accept this offer if you were me?" This is a trap for the mediator. Mediators may have a different risk tolerance and may not fully appreciate all of the ramifications of a proposed resolution. The best a mediator can do in this situation is to review the risks of not settling, summarize the discussion so far

and, if appropriate, note that the offer represents a reasonable settlement, and leave the decision entirely to the parties.

C. Breach of ethical considerations

A number of the issues discussed above if not properly handled raise ethical issues for mediators, including maintaining neutrality and confidentiality. Mediators must also avoid conflicts of interest and the appearance of a conflict. Franchising is like a small town. Mediators with a long history in franchising will have relationships with franchisors, franchisees and franchise counsel, and should disclose the relationships to the parties. Additionally, as discussed later in this paper, the ABA Formal Opinion 518 released in October 2025, provides guidance for lawyers who act as mediators.

VII. Pitfalls for the Practicing Lawyer in Mediation

Lawyers can prevent setting themselves up for failure in a mediation if they are cognizant of the points described below.

A. Lack of Preparation

Surprisingly, one of the more frequent pitfalls for lawyers in mediation is insufficient preparation. Unlike litigation, where lawyers approach a trial by conducting and relying upon extensive discovery, motions practice and accumulation of supporting evidence, mediation is not strictly about the legal issues and requires a different approach. While lawyers must understand the legal aspects of their case, they must also assess the likely success of their case, the interests and emotions of their client and whether there are resolutions short of trial that may serve the clients better than time and costly drain of trial. Lack of preparation for mediation can stem from several things – a lawyer's rigid position about the client's case and determination to take the client's claim to trial, making the lawyer inflexible and cynical about the mediation process. This lawyer feels dragged unwillingly to mediation because the franchise agreement has a mandatory mediation provision in it and resists preparing his client to consider alternatives to trial. Other lawyers view mediation as an easy way to get discovery about a case or want to go to mediation because they believe either the mediation process or the mediator will "force" the other side to settle the claim without much work on their part. Each is problematic revealing a misunderstanding of the mediation process. The lawyer's failure to gather all necessary documents, understand the facts, and recognize the emotional stakes needed to achieve a potential resolution in mediation can undermine the effectiveness of the lawyer's representation of the client and potentially, result in misjudgment of the client's interests and desired outcomes.

B. Ineffective Communication

Effective communication between counsel and between counsel and the mediator is pivotal. Lawyers must articulate their clients' positions clearly and persuasively while also actively listening to the other party whether in the general/ opening session or as relayed by the mediator. Failing to actively listen to both client and the other party and communicate the client's position can result in the lawyer "not hearing" what is actually

being said – this can result in the lawyer taking positions that are contrary to the client's interests and failing to grasp issues that could lead to a resolution. In addition to active listening, lawyers need to balance assertiveness with diplomacy as an overly aggressive lawyer can escalate tensions leading to a failed mediation.

C. Inflexibility in Negotiation

While lawyers often prepare a strategy for mediation outcomes, inflexibility or lack of openness to considering creative or new approaches to resolution can significantly hinder negotiations. Lack of flexibility can also prolong a mediation leading to increased costs and tension. The dynamic nature of mediation requires lawyers to be adaptable to changing circumstances in the mediation environment.

D. Client Management Challenges

Mediation also requires the lawyers to effectively manage their clients. Each client must have clear expectations about the mediation process and it is their lawyer's responsibility to help the client understand and set those expectations. Mediation can be an emotional process, and lawyers must prepare their clients for potential disappointments and the realities of negotiation. Failing to do this can result in emotional outbursts, resistance or withdrawal from the mediation. As indicated above, some lawyers will fail to understand their client's interests and goals, prioritizing their legal strategies over their clients' desires. This will cause clients to feel alienated from the lawyer and the entire process.

E. Ethical Dilemmas

Lawyers must navigate a complex ethical landscape in mediation, where the informal setting and collaborative spirit may blur professional boundaries. Ethical pitfalls include:

While applying mediators, lawyers acting on behalf of their clients must be aware of the duties of a mediator and be watchful for compliance during any mediation. In October 2025, the ABA's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 518, "A Lawyer's Duties to Avoid Misleading Communications When Acting As A Third Party Neutral.[6] While the Opinion applies only to lawyers who are mediators (as adopted on a state by state basis). it is important for lawyers representing clients in mediation to be cognizant of it because it prohibits a mediator from advising the parties on what is in the "parties' best interest." While mediation is about interest-based bargaining instead of positions, it is the role of the client lawyer to advise the client about what is in the best interest of the client and not the mediator. This, of course, does not prohibit the mediator from ascertaining and discussing the interests of the parties including their goals.[7]

[6] ABA Comm. on Ethics & Pro. Resp., Formal Op. 518 (2025).
[7] *Model Rules of Pro. Conduct r. 2.4 (Am. Bar Ass'n 2023).*

A lawyer – mediator cannot give legal advice and needs to be careful when recommending a settlement so as not to violate the Model Rules prohibition on mixing of roles. Lawyers who are acting as mediators should only propose settlement terms if he or she is clear about their role in making such a proposal. For example, mediators should only make a mediator's proposal when there is an impasse and the mediator gauges the interest of each party in the proposal separately and confidentially. The proposal should be framed not as advice but as a prediction of whether the proposal may be within the zone of possibility. The Opinion states a mediator may offer an opinion as to how a court is likely to rule on an issue but not state or imply that settlement is in the parties' best interest because a court is likely to rule adversely. Puffing about settlement authority or a client's bottom line are not accepted as statements of material fact in negotiation when made by the client lawyer; but a mediator who is a lawyer is bound by a duty of honesty which has no carve-out for puffing.[8]

If a lawyer represents multiple parties or has a personal relationship with someone involved in the mediation, conflicts may arise that compromise their ability to advocate effectively for their client. Full disclosure of any such conflict must be made by the lawyer and he or she must obtain informed consent in writing if possible. The lawyer's duty of loyalty to the client is paramount and can be violated under conditions where conflicts are not disclosed. Id.

Mediation relies heavily on confidentiality. Lawyers must guard against breaches of confidentiality, whether intentional or inadvertent, as these can have serious implications for the mediation process and future litigation.

F. Ineffective Use of the Mediator

Mediators play a crucial role in guiding the mediation process, and if lawyers fail to utilize the mediator's skills effectively, it can lead to unresolved issues. A lawyer may overlook the opportunity to utilize the mediator's experience to facilitate discussions or clarify points of contention. If lawyers approach mediation with a dismissive attitude towards the mediator's input, they risk losing the chance to achieve resolution.

G. Setting Fixed Deadlines for the Mediation

While it is typical to have a target in mind for the time the client will devote to the mediation, a fixed deadline will tend to reduce the likelihood that the parties will make offers or counter-offers as the fixed deadline approaches. Mediation is a process that takes time for the parties to appreciate the merits of each side's position. Clients should be counseled to keep their minds and schedules open in order to get the benefit of mediation.

VIII. Franchisor Ombudsman Programs

A franchisor ombudsman program is a trusted resource that helps franchisees and other franchise stakeholders raise concerns early, explore options, and find a resolution

[8] ABA Comm. on Ethics & Pro. Resp., Formal Op. 518 (2025)

before the concerns become a serious dispute. Ombudsman programs should have strong standards of independence, impartiality, confidentiality, and informality, and should work alongside legal, HR, compliance, and field functions without replacing them.[9] These programs may be managed internally or provided by a trusted external ombuds provider.

The business impact of a good ombuds program is measurable: faster problem-resolution, fewer costly conflicts, improved communication, and actionable system-level insights that allow leadership to refine policies and strengthen franchisees' businesses and, in turn, the entire franchise system.

You will learn how ombuds programs function in a franchising context; the benefits of ombuds programs; and have a practical outline for a charter that you may use to implement an ombudsman program within your own or your client's franchise system.

A. What Is a Franchisor Ombudsman Program?

An ombuds (often called "ombuds" or "ombudsman") provides a confidential, neutral, independent, and informal channel for individuals to discuss concerns and consider options without initiating a formal process. Most ombuds programs are designed to provide a resource to franchisees and other stakeholders within the franchise system, a resource that will listen, coach, facilitate dialogue between franchisees and the, and offer different options to help parties reach practical solutions. The ombuds do not adjudicate or issue binding decisions, choose sides, provide formal notice to the organization, conduct investigations, or provide legal advice.

Franchisors known to have internal ombuds programs include McDonald's Corporation[10] and Snap-on Tools Company LLC[11].

B. Core Attributes [12]

- **Independence** — The ombuds program operates outside the franchisor's standard line of management, reports as high as possible in the organization, and maintains functional autonomy, including budgets.

- **Impartiality/Neutrality** — The ombuds does not advocate for any party; they advocate for fair process, constructive dialogue, and reasonable outcomes.

- **Confidentiality** — Conversations with the ombuds are to be kept in confidence unless the individual expressly authorizes the disclosure.

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[9] International Ombuds Association ("IOA") https://www.ombudsassociation.org/resources-for-starting-an-ombuds-office

[10] Item 3 of the Franchise Disclosure Document for McDonald's Corporation issued on May 1, 2026, states in part, "Occasionally, disputes arise with our franchisees. If a dispute cannot be resolved through our internal processes such as appealing to higher level individuals (our "open door policy") or our formal Ombudsman process, then as a matter of common practice (not required by the Franchise Agreement) we will often agree to use mediation.

[11] Item 20 of the Franchise Disclosure Document for Snap-on Tools Company LLC issued on February 13, 2026, cites the name and contact information for its ombudsman.

[12] Id.

The ombuds will safeguard identities and details, subject only to, clearly disclosed exceptions, such as imminent risk of serious harm or legal mandates.

- **Informality** — Use of the ombuds program is a voluntary, informal resource and does not replace the contractual processes—nor does the ombuds accept formal notice on behalf of the organization.

C. What are the Benefits of an Ombuds Program.[13]

A well-designed and effectively administered ombuds program provides significant benefits to the entire franchise system. By offering franchisees a confidential and impartial resource to facilitate discussion and resolution of issues, whether independently or in coordination with the franchisor, the program helps strengthen trust and collaboration between the parties. This process reinforces franchisees' confidence that the franchisor is committed to supporting the long-term health and success of their businesses. In turn, the franchisor gains valuable insights into emerging concerns and systemic issues within the network, enabling more informed decision-making and proactive management of the franchise system.

D. Early, Low-Barrier Problem-Solving – Before Mediation

Ombuds programs are typically offered at no cost to franchisees, and an initial conversation with the ombuds provides a safe, confidential first step for franchisees to conduct a preliminary assessment of their concerns, explore options, and prepare to engage productively with the franchisor. In many cases, this initial discussion offers coaching that helps clarify interests and begins shaping solutions the franchisee can implement independently, often without the franchisor ever being aware that the franchisee consulted the ombuds.

In other situations, the franchisee and the ombuds may determine that the ombuds should reach out to the franchisor, either anonymously or not, to help facilitate communication and lay the foundation for constructive dialogue between the parties. These early conversations generally occur before positions harden and interpersonal dynamics deteriorate.

By addressing issues proactively and well before mediation, arbitration, or litigation, ombuds programs help reduce the cost, disruption, and adversarial nature of formal proceedings while allowing the parties to retain greater control over both the process and the outcome.

E. Builds Trust

Confidential and impartial access increases the likelihood that franchisees will raise concerns they might otherwise withhold—whether related to policy changes, perceived inconsistencies in program implementation, morale challenges, or sensitive

[13] www.mwi.org and www.ombudsassoication.org

compliance matters. The assurance that the ombuds does not take sides encourages candid dialogue and helps reframe difficult conversations around underlying interests, rather than perceived faults. In addition, the option to raise issues anonymously provides franchisees with further confidence that they can speak openly without fear of retaliation.

F. De-escalation

By equipping participants with tools to listen actively, restate understandings of what was heard, and negotiate constructively, the ombuds helps shift discussions away from reactive, emotionally charged exchanges and toward problem-solving. This structured communication reduces misunderstandings, a common driver of escalation, and ensures each party feels heard and respected. Through facilitated dialogue or communication coaching, the ombuds helps keep the focus on shared objectives, such as brand standards, customer experience, and unit economics, rather than on personal grievances alone. As a result, tensions decrease, defensiveness is lowered, and conversations become more collaborative and productive. This process can lead to de-escalation and result in better long-term, respectful relationships.

G. Franchisor Insights

The ombuds aggregates and anonymizes data to identify emerging themes and systemic gaps, such as policy ambiguities, training needs, transparency concerns, rollout challenges, or inconsistencies in field support. By addressing these patterns proactively, franchisors demonstrate responsiveness and fairness, which can improve system-wide alignment, adoption, and performance across the network.

H. Mediation/Arbitration/Litigation Avoidance

Litigation is expensive, time-consuming, and often requires disclosure in Franchise Disclosure Documents. By fostering early resolution, ombuds programs help reduce the number of issues that escalate to more formal proceedings. Ombuds provide a confidential, low-conflict forum where concerns can be addressed early, minimizing both the financial and emotional burdens associated with mediation, arbitration, and litigation. This proactive approach can not only reduce legal costs, time commitments, and personal strain, but also preserve relationships and empowers the parties to retain control over their own outcomes.

I. Compliance and Risk Management

Confidential reporting avenues are hallmark features of robust compliance frameworks. A well-designed ombuds function can help support internal raising of ethics, fraud, safety, and compliance concerns, while maintaining its distinct, informal role and avoiding duplication of formal hotlines or investigations. Early detection allows management to address risk proactively and reduce possible exposure.

J. Brand Protection and Reputation Management

Public disputes can erode trust in the brand and divert attention from core business priorities. A confidential channel enables sensitive concerns, including conduct-related issues, to be raised and addressed before they become public, protecting the organization's and/or the franchisee's reputation and respecting those involved.

IX. How Do I Build an Ombuds Program?

1. Internal, External, and Association Based Ombuds Programs

There are three types of ombudsman programs: internal, external, and association funded (such as by an organization like the IFA). All programs are set up to benefit both the franchisee and the franchisor, as discussed above.

To run any successful ombuds program, franchisors must ensure that the program is set up to honor the core attributes of an ombudsman program: independence, impartiality/neutrality, confidentiality, and informality.

Model 1: Internal Organizational Ombuds

Franchisors establishing an internal ombuds program must be prepared to invest in dedicated personnel, typically a single ombuds for smaller systems or a small, specialized team for larger networks. The ombuds should be hired as an independent corporate function positioned as high within the organization as practicable, with a clear structural separation from sales, operations, compliance, and legal. This independence is essential to ensuring neutrality, building trust, and preserving the integrity of the program.

Model 2: External Ombuds Resource

An external provider can deliver compliant services with flexible intake (phone, secure web form), scalable casework, and dashboard reporting of anonymized trends. This model supports rapid standing-up of the function, allows right-sizing as volumes evolve, and can serve as a transitional step to an internal office.

Model 3: Association Ombuds Resource

Associations may offer ombuds services to their members, providing the immediate benefits of an established program while leadership evaluates organizational fit, member demand, and long-term resourcing needs. It may be that an association's ombuds resourced meets the franchisor's needs and the needs of the franchisor's system, or it may offer the Franchisor insight as they determine the best ombuds program for their system.

2. Readiness Checklist

- **Leadership Mandate & Scope**. Obtain executive endorsement to create an ombuds program (with the core attributes in mind: independence, impartiality/neutrality, confidentiality, and informality),

that will focus on serving franchisees with authority to work informally across the franchise system and report anonymized trends to leadership.

- **Charter Development**. Draft an ombuds program charter that: identifies and affirms the program's core attributes; clearly establishes its non-notice status; specifies the ombuds' reporting line within the franchisor's organizational structure; outlines confidentiality expectations and any applicable exceptions; and defines the protocols for anonymized trend reporting.

- **Program Design & Intake**. Offer confidential contact methods with clear explanations of what the ombuds does and does not do.

- **Selection & Training**. Recruit an ombuds with franchise experience and experience without in franchisor's system, if possible. The ombuds should have or receive professional ombuds training. Require adherence with a code of ethics, such as the IOA Code of Ethics.[14]

- **Data & Reporting Schedule**. Implement anonymized case notes and aggregated reporting. Establish regular schedule for trend reporting to executives and any franchisee advisory council.

- **Communication Rollout**. Publicize the ombuds program to franchisees with information on franchisee portals or hubs. Develop FAQs. Reinforce that the office does not replace legal or formal dispute resolution methods.

- **Governance & Evaluation**. Regularly review charter, feedback, and possible improvements to the franchise system. Also review year over year Ombuds reporting, and formal dispute resolution expense.

3. Implementation Plan[15]

Phase 1 (Weeks 1–4): Strategy & Charter Develop standards, best practices, and a formal program charter; secure executive sponsorship and the necessary budget; and obtain input from Legal and an external ombuds expert.

Phase 2 (Weeks 5–8): Staffing & Infrastructure Establish secure matter-management protocols, along with a dedicated phone line and an online access point for franchisees.

Phase 3 (Weeks 9–12): Pilot & Communications Start with a select regional launch and gather early feedback. Publish FAQs, present the program to

[14] https://ioa.memberclicks.net/assets/docs/SOP-COE/IOA_Code_of_Ethics_English.pdf
[15] Additional resources at www.ombudsassociation.org.

franchisee advisory councils and field leaders, and clarify how the ombuds program complements the broader franchise system.

Phase 4 (Weeks 13–16): System-Wide Release & Metrics Release to all regions. Begin regularly scheduled anonymized trend reporting to leadership and franchisee advisory council. Take feedback and make improvements.

X. What to Include in the Charter[16]

A charter serves as the foundational document for the ombuds program, articulating its core attributes of independence, impartiality/neutrality, confidentiality, and informality. It establishes the authority under which the program operates and outlines key elements such as scope, confidentiality expectations, independence safeguards, reporting protocols, and data-privacy provision.

XI. Recommended Sections[17]

1. **Purpose / Mission**. State that the ombuds program serves as a confidential, impartial, informal, and independent resource available at no cost to franchisees (and any other defined constituents). Its mission is to provide a safe avenue to surface concerns, explore options, facilitate communication, and support early, fair resolution of issues.

2. **Authority & Independence**. Specify the reporting line, budget autonomy, and appointment/removal protections; emphasize separation from Legal, HR, Compliance, and Operations.

3. **Standards of Practice / Code of Ethics**. Incorporate standards and a code of ethics, noting the office's informal role and that use is voluntary.

4. **Confidentiality**. Promise confidentiality with narrow exceptions (imminent risk of serious harm; legal requirements).

5. **Informality & No-Notice**. Clarify that contacting the ombuds does not constitute formal notice to the franchisor; and the office does not investigate, make findings, issue binding decisions, or advocate for any party.

6. **Scope**. Define who may use the office (franchise owners, selected employees, franchisor personnel) and what issues are in scope (any matter affecting the franchise relationship), with referral pathways when another path is more appropriate.

[16] Additional resources at www.wmi.org and www.ombudsassociation.org.
[17] Sample charter available at: https://ioa.memberclicks.net/assets/docs/Conference-Contract-Ombuds-Resources/Sample%20Charter--IOA_Conference_Ombuds_Toolkit.docx

7. **Anti-Retaliation**. Affirm the organization's commitment to non-retaliation for good-faith use of the office or participation in a process initiated by the ombuds.

8. **Data Handling & Trend Reporting**. Describe recordkeeping, anonymized data reporting, report schedule, and recipients of reports, with precautions to prevent identification.

9. **Intake**. Provide contact information, hours, and a statement that there is no fee to contact the ombudsman.

10. **Interfacing with Other Functions**. Outline, high-level, the possible coordination with different departments of the franchisor, such as Legal, HR, Compliance, and Field Operations.

11. **Program Evaluation & Continuous Improvement**. Commit to periodic reviews for effectiveness and explain how updates are approved and communicated to management and franchise advisory councils.

XII. Ombuds Conclusion

Franchising succeeds through mutual interdependence: franchisors steward and advance the brand, while franchisees deliver local execution and on-the-ground insights. The core attributes (independence, impartiality/neutrality, confidentiality, and informality) provide both parties with a reliable, early, and confidential channel to surface concerns and resolve them constructively. The benefits are share, reduced litigation risk and cost, stronger day-to-day communication, and a continuous flow of system-level insights that inform more effective policies and support.

EXHIBIT A

Sample Mediation Provisions

Burger King

A. Non-Binding Mediation. BKC and Franchisee agree that they shall attempt to resolve any dispute ("Development Dispute") that arises out of a decision by BKC to develop or authorize development of a new restaurant ("Development Decision"), by negotiation between Franchisee and representatives of BKC who have authority to settle the Development Dispute. The BKC representative shall be at a higher level of management than the person with direct responsibility for the initial Development Decision. If the matter has not been resolved within Thirty (30) days of referral of the Development Dispute to the BKC representative for negotiation, BKC and Franchisee shall attempt to settle the Development Dispute by nonbinding mediation. The mediation procedure to be followed by the parties shall be set forth in BKC's then current Procedures for Resolving Development Disputes (the "Procedures").

B. Binding Dispute Resolution. The Procedures shall also set forth a binding dispute resolution process which may be initiated pursuant to the Procedures at the sole election of Franchisee in the event the dispute is not resolved through the mediation process. Subject to modifications made pursuant to Section 20.C. below, the Procedures shall remain valid and enforceable by Franchisee and BKC for the Term of this Agreement.

C. The terms and conditions of the Procedures shall not be materially modified by BKC without the express written approval of the Franchisee Advisory Council.

D. Franchisee shall not institute any legal or administrative proceeding for claims arising out of a Development Decision without first attempting to resolve the Development Dispute through negotiation and non-binding mediation. If the Development Dispute has not been resolved through negotiation or mediation pursuant to Sections 20.A and Franchisee has not timely elected the optional binding dispute resolution pursuant to 20.B above, either party may initiate litigation.

Jersey Mike's

27.2 Except as otherwise provided in this Agreement, any claim or controversy arising out of or related to this Agreement, or the making, performance, breach, or interpretation of this Agreement, except for any actions brought with respect to: (i) ownership or use of the Marks; (ii) securing injunctive relief pursuant to Section 27.6 of this Agreement; (iii) any covenant listed within Section 16 or conditions within Sections 17 or 18 of this Agreement; (iv) the right to indemnification or the manner in which it is exercised; shall first be the subject of an informal meeting between the parties to resolve the dispute and then subject to non-binding mediation. The parties agree to conduct the mediation in accordance with the then-current commercial mediation procedures of the American

Arbitration Association (the "AAA"), except to the extent the rules conflict with this Agreement, in which case this Agreement shall control. However, the mediation need not be administered by the AAA unless the parties cannot agree upon the selection of a mediator within thirty (30) days of the receipt of the written notice of mediation. If the parties cannot reach agreement upon the selection of a mediator, either party may commence a mediation proceeding by making a request for mediation to the AAA regional office closest to Monmouth County, New Jersey, with a copy to the other party. The written request for mediation shall describe with specificity the nature of the dispute and the relief sought. Both parties are obligated to engage in the mediation.

The mediation will be conducted by a single mediator with no past or present affiliation or conflict with any party to the mediation. The parties agree that the mediator shall be disqualified as a witness, expert, consultant or attorney in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation. In the event the parties cannot agree on a mediator and the AAA administers the mediation, the AAA shall provide the parties with a list of mediators willing to serve. The parties will have ten (10) days from receipt of the list from the AAA to agree upon a mediator from the list. If neither party advises the AAA in writing of an agreement within ten (10) days of receipt of such list, the AAA shall appoint the mediator.

The fees and expenses of the AAA (or other administrator), if applicable, and the mediator's fee, shall be shared equally among the parties. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation irrespective of the outcome of the mediation or the mediator's evaluation of each party's case. The mediation shall occur within thirty (30) days after selection of the mediator.

Regardless of which party initiates the mediation, the parties agree to conduct the mediation at a suitable location chosen by the mediator in Monmouth County, New Jersey. At least seven (7) days before the first scheduled session of the mediation, each party shall deliver to the mediator a concise written summary of its position with respect to the matters in dispute (such as claims or defenses) and such other matters required by the mediator. Franchisee is prohibited from commencing any formal legal action against Franchisor or its Affiliates, and (except as provided above in this Section 27.2) Franchisor is prohibited from commencing any formal legal action against Franchisor or its Affiliates, with respect to any claim or dispute subject to mediation unless mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor reserves the right to specifically enforce its right to mediation. As noted above, mediation shall not defer or suspend Franchisor's exercise of any termination right under this Agreement.

Freddy's

Section 18.1. Mediation. Licensee and Licensor agree to submit, prior to arbitration, all unsettled claims, disputes, controversies, and other matters in question between them arising out of or relating to this Agreement (including, but not limited to, any claim that the Agreement or any of its provisions is invalid, illegal, or otherwise voidable or void), the

dealings or relationship between Licensee and Licensor, or Licensee's operation of the Restaurant ("Disputes") to mediation in Wichita, Kansas and in accordance with the Commercial Mediation Rules of the American Arbitration Association currently in effect. Demand for mediation shall be made within a reasonable time after cessation of negotiations.

A. A. Mediation shall be private, voluntary, and nonbinding. Any party may withdraw from the mediation at any time before signing a settlement agreement upon written notice to each other party and to the mediator. The mediator shall be neutral and impartial. The mediator's fees shall be shared equally by the parties. The mediator shall be disqualified as a witness, consultant, expert, or counsel for either party with respect to the matters in Dispute and any related matters.

B. Unless the parties agree otherwise, the entire mediation process shall be confidential and without prejudice. The parties and the mediator shall not disclose any information, documents, statements, positions, or terms of settlement. Nothing said or done or provided by the parties in the course of mediation shall be reported or recorded or, except as ordered by a court of competent jurisdiction, placed in any legal proceeding or construed for any purpose as an admission against interest. Nevertheless, evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in mediation.

C. If a Dispute cannot be resolved through mediation, the parties agree to submit the Dispute to arbitration, subject to the terms and conditions of this Article 18.

Darden (LongHorn)

Non-Binding Mediation. Before any Party may bring an action or commence a proceeding against the other, the Parties must first meet to mediate the dispute. Any such mediation will be non-binding and will be conducted by the American Arbitration Association in Orlando, Florida, in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 26(b) will not bar either Party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation. This Section 26(b) will not be applicable to any claim or dispute arising under this Agreement or any other agreement between the Parties which relates to the failure to pay fees or other monetary obligation of Franchisee under this Agreement or with respect to Franchisee's use of Confidential Information or the Marks. Mediation hereunder will be concluded within forty-five (45) days of the date the mediator is designated by the American Arbitration Association or such longer period as may be agreed upon by the Parties in writing. All aspects of the mediation process will be treated as confidential, will not be disclosed to others, and will not be offered or admissible in any other proceeding or legal action whatever. Franchisor and Franchisee will each bear their own costs of mediation, and each will bear fifty percent (50%) of the cost of the mediator or mediation service.

Dutch Bros

Informal Dispute Resolution; Mediation. Before initiating any arbitration or litigation proceeding for any dispute arising under or relating to this Agreement or the Franchised Business, the party intending to initiate the proceeding will notify the other party in writing of the existence and nature of the dispute. Within 15 business days after the other party's receipt of the notice, one of our officers or managers will meet with you or one of your owners, officers, or Managers at our principal place of business, or other mutually agreeable location, to negotiate in good faith in an effort to resolve the dispute amicably. If this informal attempt to resolve the dispute is unsuccessful, the parties agree to mediate the dispute with a mediator mutually agreed upon by the parties. The mediation will be held in Tempe, Arizona, or such other place as we may reasonably designate. The mediation will be held as promptly after expiration of the 15-day negotiation period as commercially practicable. Each party shall be responsible for its own costs and fees relating to the mediation, as well as 50% of the mediator's fee. If the mediation does not resolve the dispute, either party may initiate arbitration as described under Section 16.2.

BIOGRAPHIES

Dana Dombrowski is Lead Corporate Counsel at Snap-on Tools, where she advises on global franchise operations with an emphasis on franchise law, regulatory compliance, and dispute resolution. Her practice is grounded in a practical, business-oriented approach, with a focus on translating legal risk into clear, actionable guidance for the enterprise.

Joyce Mazero is Co-Chair of Polsinelli's Global Franchise and Supply Network practice as well as a Certified Mediator. She is an innovative global executive with extensive expertise in franchising, distribution and supply chain ecosystems who has structured and negotiated international cross-border deals in over 60 countries with particular expertise in Asia, MENA and Latin America. She has shaped numerous M&A transactions in a wide range of industries that have led to increased sales and market penetration. She is especially knowledgeable in the energy, transportation, consumer goods and food products industries. She brings the ability to assess risk and strategy for companies driving both international and domestic growth through innovative franchising, distribution and supply chain arrangements. Joyce has held the Chambers USA prestigious Band 1 ranking in franchising for 19 consecutive years being one of only a handful of executives to hold such recognition and is the recipient of numerous leadership awards from the International Franchise Association, Women's Foodservice Forum, Franchise Times, and Dallas Business Journal.

Brian Balconi is the principal of Balconi Mediation Services, where he focuses on mediating franchise and complex business disputes. He began his legal career in private practice representing franchisees and their associations in disputes with franchisors. Mr. Balconi later served as in-house counsel for Dunkin' Brands, followed by roles as General Counsel of Little Caesars and Chief Legal Officer of Authority Brands. In addition to his legal experience, he has significant executive and operational experience, including serving as President of Gloria Jean's Coffees. Mr. Balconi regularly speaks at industry events, including conferences hosted by the International Franchise Association and the American Bar Association Forum on Franchising, where he previously served as Director of the Corporate Counsel Division. He earned a Bachelor of Business Administration from the University of Notre Dame and a Juris Doctor from the University of San Diego School of Law.