

Utah Code of Judicial Administration
Rules 4-510.01 – 4-510.06
(2018)

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Rule 4-510.01. Alternative dispute resolution definitions.

Intent:

To establish definitions for the Alternative Dispute Resolution (ADR) Program.

Applicability:

This rule applies in the district court.

Statement of the Rule:

As used in Rules 4-510.01 through 4-510.06:

(1) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by this rule and URCADR.

(2) "ADR program" means the alternative dispute resolution program.

(3) "Binding arbitration" means an ADR proceeding in which the award is final and enforceable as any other judgment in a civil action unless vacated or modified by a court pursuant to statute, and in which the award is not subject to a demand for a trial de novo.

(4) "Collaborative Law" is a process in which the parties and their counsel agree in writing to use their best efforts and make a good faith effort to resolve their divorce, paternity, or annulment action by agreement without resorting to judicial intervention except to have the court approve the settlement agreement and sign orders required by law to effectuate the agreement of the parties. The parties' counsel may not serve thereafter as litigation counsel except to obtain court approval of the settlement agreement.

(5) "Court Qualified Mediator" means a mediator who is currently on the Utah Court Approved ADR Roster or who for some reason cannot join the roster due to a conflict of interest but meets all of the requirements to be on the Utah Court Approved ADR Roster.

(6) "Director" means the Director of Dispute Resolution Programs.

(7) "Domestic Mentor" means a mediator who has completed 300 hours in conducting mediation in domestic cases and completed a domestic mentor orientation.

(8) "Master Mediator" means a provider who has completed 300 hours in conducting mediation sessions documented as required by the director. A master mediator may also act as a "Primary Trainer."

(9) "Nonbinding arbitration" means an ADR proceeding in which the award is subject to a trial de novo;

(10) "Primary Trainer" means a provider who qualifies as a "Master Mediator" on the court roster or a person with equivalent experience researching and teaching the theory and practice of alternative dispute resolution and may oversee mediation training that fulfills the court's 40-hour mediator training requirement for the roster.

(11) "Roster" means the list of those persons qualified to provide services under the ADR program, and includes the information supplied by such persons pursuant to paragraph (3)(A)(i) of this rule.

(12) "URCADR" or "Utah Rules of Court-Annexed Alternative Dispute Resolution" means the rules adopted by the Utah Supreme Court which govern the ADR program.

Rule 4-510.02. Responsibilities of the Director and Administrative Office of the Courts.

Intent:

To establish the responsibilities of the Director and the Administrative Office of the Courts to implement the ADR Program.

Applicability:

This rule applies to the Director and the AOC.

Statement of the Rule:

(1) The Director shall:

(1)(A) have general responsibility for the administration of the ADR program;

(1)(B) annually prepare and submit the report required by the Utah Code;

(1)(C) establish and maintain the roster on the court's web site;

(1)(D) prepare model forms for use by the courts, counsel and parties under these rules, and provide copies of the forms upon request; and

(1)(E) establish procedures for the review and evaluation of the ADR program and the performance of ADR providers.

(2) The Administrative Office shall establish or qualify programs for the education and training of ADR providers, attorneys, and judges in the applicable judicial districts of this State as to the purposes and operation of, and the rules governing, the ADR program.

Rule 4-510.03. Qualification of ADR providers.

Intent:

To establish eligibility and qualification requirements for inclusion on the Utah Court Approved ADR Roster including additional requirements for designation as a Divorce Roster Mediator, Master Mediator and Domestic Mentor.

Applicability:

This rule applies in the district court.

Statement of the Rule:

(1) To be eligible for the roster, an applicant must:

(1)(A) submit a written application to the Director setting forth:

(1)(A)(i) a description of how the applicant meets, or will meet within a reasonable time, the requirements specified in paragraph (2)(A), if applicable;

(1)(A)(ii) the major areas of specialization and experience of the applicant, such as real estate, estates, trusts and probate, family law, personal injury or property damage, securities, taxation, civil rights and discrimination, consumer claims, construction and building contracts, corporate and business organizations, environmental law, labor law, natural resources, business transactions/commercial law, administrative law and financial institutions law;

(1)(A)(iii) the maximum fees the applicant will charge for service as a provider under the ADR program; and

(1)(A)(iv) the judicial districts in which the applicant is offering to provide services and the location and a description of the facilities in which the applicant intends to conduct the ADR proceedings;

(1)(B) agree to complete and annually complete up to six hours of ADR training as required by the Judicial Council;

(1)(C) submit an annual report to the Director indicating the number of mediations and arbitrations the ADR provider has conducted that year; and

(1)(D) be re-qualified annually.

(2) To be included on the roster as a mediator:

(2)(A) all new applicants to the court roster must also have successfully completed at least 40 hours of court-approved basic formal mediation training in the last three years. This training shall be under a single training course from a single, court-approved training provider. The applicant must also complete 10 hours of experience in observing a court qualified mediator conduct mediation, and 10 hours in either conducting mediations singly or co-mediating with a court qualified mediator, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;

(2)(B) successfully pass an examination on the ethical requirements for mediators on the Utah Court Roster;

(2)(C) agree to conduct at least three pro bono mediations each year as referred by the Director; and

(2)(D) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other serious crime, and has not received professional sanctions that, when considered in light of the duties and responsibilities of an ADR provider, are determined by the Director to indicate that the best interests of the public are not served by including the provider on the roster.

(3) To be included on the court roster for qualified divorce mediators:

(3)(A) All new applicants to the roster of divorce mediators must also have an additional 32 hours of court-approved training specific to the skills, Utah laws, and information needed to conduct divorce mediation. This training shall be under a single training course from a single, court-approved provider.

(3)(B) All applicants must have a minimum of 6 hours of training specific to domestic violence and screening for domestic violence which may be included in the court approved 32 hour training referred to above.

(3)(C) New applicants to the court roster of divorce mediators are required to have acquired experience specific to divorce mediation. This is in addition to the 20 hours of experience required for the court roster of basic mediators. The additional experience includes having observed a minimum of two divorce mediations, co-mediating two divorce mediations and having been observed conducting two divorce mediations. Each of these includes debriefing and analysis afterward with a mediator who has Domestic Mentor status. The Domestic Mentor may charge a fee for this service.

(3)(D) The Director will maintain and make available a list of those mediators who have Domestic Mentor status.

(4) To be included on the roster as a Master Mediator, the provider must also have completed 300 hours in conducting mediation sessions.

(5) To be included on the roster as a Domestic Mentor, the provider must also have completed 300 hours in conducting mediation in domestic cases and completed a domestic mentor orientation.

(6) To be included on the roster as an arbitrator, the provider must also:

(6)(A) have been a member in good standing of the Utah State Bar for at least ten years, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;

(6)(B) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other serious crime, and has not received professional sanctions that, when considered with the duties and responsibilities of an ADR provider are determined by the Director to

indicate that the best interests of the public are not served by including the provider on the roster; and

(6)(C) agree to conduct at least one pro bono arbitration each year as referred by the Director.

(7) To be re-qualified as a mediator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least six mediation sessions or conducted 24 hours of mediation during the previous year.

(8) To be re-qualified as an arbitrator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least three arbitration sessions or conducted 12 hours of arbitration during the previous year.

(9) A provider may be sanctioned for failure to comply with the code of ethics for ADR providers as adopted by the Supreme Court or for failure to meet the requirements of this rule or state statute. The committee shall inform the public of public sanctions against a provider promptly after imposing the sanction.

(9)(A) Public sanctions may include singly or with other sanctions:

a written warning and requirement to attend additional training;

(9)(A)(i) require the mediator to allow the Director or designee to observe a set number of mediation sessions conducted by the mediator;

(9)(A)(ii) suspension for a period of time from the court roster; and

(9)(A)(iii) removal from the court roster.

(9)(B) Private sanctions may include singly or with other sanctions:

(9)(B)(i) admonition;

(9)(B)(ii) re-take and successfully pass the ADR ethical exam.

(10) The committee shall approve and publish procedures consistent with this rule to be used in imposing the sanction. The complainant shall file a written and signed complaint with the director. The director shall notify the provider in writing of the complaint and provide an opportunity to respond. The director may interview the complainant, the provider and any parties involved. Upon consideration of all factors, the director may impose a sanction and notify the complainant and the provider. If the provider seeks to challenge the sanction, the provider must notify the director within 10 days of receipt of the notification. The provider may request reconsideration by the director or a hearing by the Judicial Council's ad hoc committee on ADR. The decision of the committee is final.

Rule 4-510.04. ADR training.

Intent: To establish course content, methodology and trainer qualifications for Court-approved 40-hour Basic Mediation Training and to establish a process for certification of training programs.

Applicability: This rule applies in the district court.

Statement of the Rule:

(1) Course content requirements. Any trainer or training program seeking to offer a mediator training program that fulfills the Court's 40-hour mediator training requirement must abide by the following:

(2) Submission of training materials. When applying for certification and renewal, training programs shall provide the ADR Office at the AOC with all training materials which will be used in the training program. These materials shall include, but are not limited to, the following: the training manual that is given to the participants including the required readings; all exercises and handouts. Revisions, deletions and/or additions to the previously approved training materials must be reported to the Office prior to conducting any course.

(3) ADR syllabus approval. In addition to submission of training materials, each training program must seek approval of its syllabus from the Office 20 working days in advance of each offering of a certified mediation training program. The syllabus shall be reviewed by the Office for compliance with the training standards. The syllabus must be submitted in a format that easily identifies the presentation topic, the trainer(s) for each topic, the time allotted to each topic, any training activities, and the inclusion of the break times. The Office shall notify the trainer or training program of any deficiencies no later than 10 working days before the program is to be offered. Any deficiencies in the program syllabus shall be corrected prior to the commencement of the training program.

(4) Readings. All training programs must provide the participants with copies of Rules 4-510.01 to 4-510.06 UCJA, Rule 104 (the ethical code), Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, and Title 78B, Chapter 10, Utah Uniform Mediation Act. Time spent reading the required materials may not count towards the required number of hours of training and can be completed by participants at times when the training program is not being conducted. Trainers shall incorporate in this program some method of ensuring that the required readings are completed.

(5) Ethics Training. Training programs shall review with participants Rule 104 Code of Ethics for ADR Providers. In addition, ethics shall be woven throughout the program.

(6) Training Methodology:

(4)(A)(ii)(a) (6)(A) Pedagogy. The program shall include, but is not limited to, the following: lecture, group discussion, written exercises, mediation simulations and role plays. In addition, outside readings should be provided by the trainer to supplement the training.

(6)(B) Mediation Demonstration. All training programs shall present a role play mediation simulation (either live or by video) prior to the participant's role play experience as the mediator.

(6)(C) A primary trainer must be in attendance during the entire training program. It is preferable that a single primary trainer fulfill this obligation, but it is permissible that this be accomplished by more than one primary trainer.

(6)(D) Participant attendance: Participants must complete their training requirement by attending one entire program. The primary trainer is responsible for ensuring that the approved syllabus is complied with. Under no circumstances may a participant be excused from attending portions of the training; any portion of training missed shall be made up as directed by the primary trainer.

(7) Trainer Qualifications. Training programs shall employ a primary trainer who meets the applicable qualifications of a primary trainer and who have been approved by the Office. In order to be approved as a primary trainer, a trainer must demonstrate the following qualifications:

(7)(A) Successful completion of a minimum of 40 hours of mediation training.

(7)(B) Participation in a minimum of 300 hours of mediation acting as the mediator.

(7)(C) Completion of 6 hours of continuing mediator education in the last year.

(7)(D) Primary trainers are approved for a three (3) year period.

Rule 4-510.05. Referral of civil actions.

Intent:

To establish procedures for the referral of civil actions to the ADR program

Applicability:

This rule applies in the district court.

Statement of the Rule:

(1) General Provisions.

(1)(A) Upon the filing of a responsive pleading, all cases subject to this rule shall be referred to the ADR program, unless the parties have participated in another ADR process, such as arbitration, collaborative law, early neutral evaluation or a settlement conference, or unless excused by the court.

(1)(B) Upon its own motion or the motion of a party, the court may excuse the parties from participating in the ADR program upon a showing of good cause.

(1)(C) Upon its own motion or the motion of a party, the court may refer an action or any issues in the action to the ADR program.

(1)(D) Upon its own motion or the motion of a party, the court may order that an action that has been referred to the ADR program be withdrawn and restored to the trial calendar upon a showing of good cause.

(1)(E) If a party believes that mediation is no longer productive, the party may terminate mediation by notifying the other party and mediator.

(1)(F) The judge to whom an action is assigned shall retain full authority to supervise the action consistent with the Utah Rules of Civil Procedure and these rules.

(2) Non-binding arbitration.

(2)(A) If the parties have timely filed an agreement to submit the case to non-binding arbitration under URCADR Rule 102, the action is stayed and the timelines of the Rules of Civil Procedure are tolled, except that discovery may continue under URCADR Rule 102(e). All subsequent proceedings shall be conducted in accordance with URCADR Rule 102 and a timetable established by the court to ensure the arbitration is completed without undue delay. The timelines of the Rules of Civil Procedure resume when the court is notified of the conclusion of ADR proceedings.

(2)(B) If a party unilaterally terminates non-binding arbitration after the hearing has begun, that party is responsible for the ADR provider fees and the reasonable attorney fees of the non-terminating party, unless the terminating party shows good cause for the termination.

(3) Notice requirements.

(3)(A) Upon conclusion of an ADR process, the plaintiff shall notify the court of the outcome of the ADR process on a form provided by the court.

(3)(B) When the case is ready for trial the parties shall certify in accordance with URCP 16.

(4) Selection of ADR provider(s).

(4)(A) Upon referral of a case or any issues therein to the ADR program, the parties shall choose the ADR provider(s) for the case. If mediation is the selected ADR process, one mediator shall be selected. If arbitration is the selected ADR process, one arbitrator shall be selected, unless the parties stipulate to or the court orders the use of a panel of three arbitrators. (4)(B) The parties may select:

(4)(B)(i) An ADR provider from the roster on the Court's web site; or

(4)(B)(ii) An ADR provider pro tempore having specialized skill, training, or experience in relevant subject matter. Pro tempore providers must agree in writing to comply with this rule and the URCADR.

(4)(C) If the parties are unable to select a provider the parties shall return a copy of the court roster to the Director with the names of up to half of the members of the roster stricken. If there are more than two parties, each party shall be permitted to strike a proportion of names equal to or less than its proportion of the number of the parties. The Director shall select the provider(s) from among those providers not stricken by any party. The Director shall mail notice of the selection to all parties and the selected ADR provider.

(4)(D) If a party, within 10 days of mailing of the notice of selection, files a written request that the selected provider be disqualified under Canon II of URCADR Rule 104, or if the ADR provider requests to withdraw for good reason from participation in a particular case to which that provider was appointed, the Director shall select another available qualified ADR provider to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in these rules.

(4)(E) The parties shall contact the ADR provider directly for services.

(5) The fees of the ADR provider shall be paid in advance and divided equally between or among the parties unless otherwise provided by the court or agreed by the parties. Any party may petition the court for a waiver of all or part of the fees so allocated on a showing of impecuniosity or other compelling reason. If such waiver is granted, the party shall contact the Director who will appoint a pro bono ADR provider.

(6) An ADR provider acting as a mediator or arbitrator in cases under the ADR program shall be immune from liability to the same extent as judges of this state, except for such sanctions the judge having jurisdiction of the case may impose for a violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(7) No ADR provider may be required to testify as to any aspect of an ADR proceeding except as to any claim of violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(8) All ADR providers providing services pursuant to the ADR program shall be subject to this rule and the URCADR.

(9) Location of ADR Proceedings. Unless otherwise agreed upon by all the parties, all ADR proceedings shall be held at the office of the ADR provider or such other place designated by the ADR provider.

Rule 4-510.06. Cases exempt from ADR rules.

Intent:

To identify the actions exempt from Rules 4-510.01 through 4-510.05.

Applicability:

This rule applies in the district court.

Statement of the Rule:

(1) Rules 4-510.01 through 4-510.05 do not apply to the following actions:

(1)(A) Title 26, Chapter 19, Medical Benefits Recovery Act;

(1)(B) Title 62A, Chapter 11, Recovery Services;

(1)(C) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(1)(D) Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(1)(E) Rules 65A, 65B and 65C of the Utah Rules of Civil Procedure; and

(1)(F) uncontested matters

(2) Rules 4-510.01 through 4-510.05 do not apply to the following actions, but they may undergo ADR procedures under other programs:

(2)(A) Title 78A, Chapter 8, Small Claims Court; and

(2)(B) Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer.

(3) Rules 4-510.01 through 4-510.05 do not apply to the following actions, but the judge may direct that they undergo ADR procedures under these rules:

(3)(A) Title 78B, Chapter 12, Utah Child Support Act;

(3)(B) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(3)(C) Title 78B, Chapter 15, Utah Uniform Parentage Act;

(3)(D) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act; and

(3)(E) temporary orders requested under Title 30, Husband and Wife, except temporary separation orders under 30-3-4.5.