

1 Rule 4-510. Alternative dispute resolution.

2 Intent:

3 To establish a program of court-annexed alternative dispute resolution for civil cases
4 in the District Courts.

5 Applicability:

6 These rules shall apply to cases filed in the District Court in the Second, Third and
7 Fourth Judicial Districts. The rules do not apply to: actions brought by or through the
8 Office of Recovery Services under Title 26, Chapter 19, Medical Benefits Recovery Act,
9 Title 62A, Chapter 11, Recovery Services, Title 78, Chapter 45, Uniform Civil Liability for
10 Support Act, and Title 78, Chapter 45a, Uniform Act on Paternity, or to; actions brought
11 under Chapters 3a, 6, 36, and 45c of Title 78, Chapter 6 of Title 30, Chapter 12 of Title
12 62A, Chapter 20a of Title 77, Rules 64 and 65 of the Utah Rules of Civil Procedure,
13 temporary orders requested under Title 30, or to; uncontested matters brought under
14 Chapter 1 of Title 42, Title 75, and Chapters 22a, 30 and 41 of Title 78; or actions
15 pursued by an assignee of a claim.

16 [Paragraph \(6\) applies only in judicial districts 2, 3 and 4.](#)

17 Statement of the Rule:

18 (1) Definitions.

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

22 (1)(B) "ADR program" means the alternative dispute resolution program described in
23 Chapter 31b, Title 78.

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

28 (1)(D) "Collaborative Law" is a process in which the parties and their counsel agree
29 in writing to use their best efforts and make a good faith effort to resolve their divorce,
30 paternity, or annulment action by agreement without resorting to judicial intervention
31 except to have the court approve the settlement agreement and sign orders required by

32 law to effectuate the agreement of the parties. The parties' counsel may not serve
33 thereafter as litigation counsel except to obtain court approval of the settlement
34 agreement.

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

39 ~~(1)(E)~~ ~~(1)(F)~~ "Director" means the Director of Dispute Resolution Programs;

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

42 ~~(1)(F)~~ (1)(H) "Master Mediator" means a provider who has completed 300 hours in
43 conducting mediation sessions documented as required by the director. A master
44 mediator may also act as a "Primary Trainer."

45 ~~(1)(G)~~ ~~(1)(I)~~ "Nonbinding arbitration" means an ADR proceeding in which the award is
46 subject to a trial de novo as provided in Utah Code Ann. § 78-31b-6(2);

47 ~~(1)(H)~~ ~~(1)(J)~~ "Primary Trainer" means a provider who qualifies as a "Master
48 Mediator" on the court roster or a person with equivalent experience researching and
49 teaching the theory and practice of alternative dispute resolution and may oversee
50 mediation training that fulfills the court's ~~30~~ 40-hour mediator training requirement for
51 the roster.

52 ~~(1)(I)~~ ~~(1)(K)~~ "Roster" means the list of those persons qualified to provide services
53 under the ADR program, and includes the information supplied by such persons
54 pursuant to paragraph (3)(A)(i) of this rule;

55 ~~(1)(J)~~ ~~(1)(L)~~ "URCADR" or "Utah Rules of Court-Annexed Alternative Dispute
56 Resolution" means the rules adopted by the Utah Supreme Court which govern the
57 ADR program.

58 (2) Responsibilities of the Director. The Director shall:

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

60 (2)(B) annually prepare and submit the report required by Utah Code Ann. § 78-31b-
61 4(5);

62 (2)(C) establish and maintain the roster, and provide copies of the roster upon
63 request;

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

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

68 (3) Qualification of providers.

69 (3)(A) To be eligible for the roster, an applicant must:

70 (3)(A)(i) submit a written application to the Director setting forth:

71 (3)(A)(i)(a) a description of how the applicant meets, or will meet within a reasonable
72 time, the requirements specified in paragraph (3)(B)(i), if applicable;

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

79 (3)(A)(i)(c) the maximum fees the applicant will charge for service as a provider
80 under the ADR program; and

81 (3)(A)(i)(d) the judicial districts in which the applicant is offering to provide services
82 and the location and a description of the facilities in which the applicant intends to
83 conduct the ADR proceedings;

84 (3)(A)(ii) agree to complete and annually complete up to six hours of ADR training as
85 required and offered by the Judicial Council;

86 (3)(A)(iii) submit an annual report to the Director indicating the number of mediations
87 and arbitrations the ADR provider has conducted that year; and

88 (3)(A)(iv) be recertified annually.

89 (3)(B) To be included on the roster as a mediator, ~~the provider must also:~~

90 (3)(B)(i) all new applicants to the court roster must also have successfully completed
91 at least 30-40 hours of court-approved basic formal mediation training in the last three
92 years. This training shall be under a single training course from a single, court-approved

93 training provider. The applicant must also complete and 10 hours of experience in
94 observing a court qualified mediator conduct mediation, and 10 hours in either
95 conducting mediations singly or co-mediating with a court qualified mediator, observing
96 a qualified mediator conduct mediations, or meet such other education, training and
97 experience requirements as the Council finds will promote the effective administration of
98 the ADR program;

99 (3)(B)(ii) successfully pass an examination on the Code of Ethics for ADR providers;

100 (3)(B)(iii) agree to conduct at least three pro bono mediations each year as referred
101 by the Director; and

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

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

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

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

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

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

125 ~~(3)(C)-(3)(D)~~ To be included on the roster as a Master Mediator, the provider must
126 also have completed 300 hours in conducting mediation sessions.

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

130 ~~(3)(D)-(3)(F)~~ To be included on the roster as an arbitrator, the provider must also:

131 ~~(3)(D)(i)-(3)(F)(i)~~ have been a member in good standing of the Utah State Bar for at
132 least ten years, or meet such other education, training and experience requirements as
133 the Council finds will promote the effective administration of the ADR program;

134 ~~(3)(D)(ii)-(3)(F)(ii)~~ be of good moral character in that the provider has not been
135 convicted of a felony, a misdemeanor involving moral turpitude, or any other serious
136 crime, and has not received professional sanctions that, when considered with the
137 duties and responsibilities of an ADR provider are determined by the Director to indicate
138 that the best interests of the public are not served by including the provider on the
139 roster; and

140 ~~(3)(D)(iii)-(3)(F)(iii)~~ agree to conduct at least one pro bono arbitration each year as
141 referred by the Director.

142 ~~(3)(E)-(3)(G)~~ To be recertified as a mediator, the provider must, unless waived by the
143 Director for good cause, demonstrate that the provider has conducted at least six
144 mediation sessions or conducted 24 hours of mediation during the previous year.

145 ~~(3)(F)-(3)(H)~~ To be recertified as an arbitrator, the provider must, unless waived by
146 the Director for good cause, demonstrate that the provider has conducted at least three
147 arbitration sessions or conducted 12 hours of arbitration during the previous year.

148 ~~(3)(G)-(3)(I)~~ A provider may be ~~removed from the roster by the director~~ sanctioned
149 for failure to comply with the code of ethics for ADR providers as adopted by the
150 Supreme Court or for failure to meet the requirements of this rule or state statute. The
151 committee shall inform the public of public sanctions against a provider promptly after
152 imposing the sanction. Private sanctions may include singly or with other sanctions:

153 (3)(I)(i) admonition;

154 (3)(I)(ii) re-take and successfully pass the ADR ethical exam.

155 Public sanctions may include singly or with other sanctions:

156 (3)(I)(iii) a written warning and requirement to attend additional training;

157 (3)(I)(iv) require the mediator to allow the Director or designee to observe a set
158 number of mediation sessions conducted by the mediator;

159 (3)(I)(v) suspension for a period of time from the court roster;

160 (3)(I)(vi) removal from the court roster.

161 (3)(J) The committee shall approve and publish procedures consistent with this rule
162 to be used in imposing the sanction. The complainant shall file a written and signed

163 complaint with the director. The director shall notify the provider in writing of the

164 director's intent to remove the provider from the roster of the complaint and provide an

165 opportunity to respond. The director may interview the complainant, the provider and

166 any parties involved. Upon consideration of all factors, the director may impose a

167 sanction and notify the complainant and the provider. If the provider seeks to challenge

168 the removal sanction, the provider must notify the director within 10 days of receipt of

169 the notification. The provider may request reconsideration by the director or a hearing

170 by the Judicial Council's ad hoc committee on ADR. The decision of the committee is

171 final.

172 (4) Responsibilities of the Administrative Office of the Courts.

173 (4)(A) The Administrative Office shall establish or qualify programs for the education

174 and training of ADR providers, attorneys, and judges in the applicable judicial districts of

175 this State as to the purposes and operation of, and the rules governing, the ADR

176 program. Any trainer or training program seeking to offer a mediator training program

177 that fulfills the Court's 30-40-hour mediator training requirement must abide by the

178 following:

179 (4)(A)(i) Course content requirements:

180 (4)(A)(i)(a) Submission of training materials. When applying for certification and

181 renewal, training programs shall provide the ADR Office at the AOC with all training

182 materials which will be used in the training program. These materials shall include, but

183 are not limited to, the following: the training manual that is given to the participants

184 including the required readings; all exercises and handouts. Revisions, deletions and/or

185 additions to the previously approved training materials must be reported to the Office
186 prior to conducting any course.

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

197 (4)(A)(i)(c) Readings. All training programs must provide the participants with copies
198 of Rule 4-510 UCJA, Rule 104 (the ethical code), ~~and UCA 78-31b-1 et seq. Title 78,~~
199 [Chapter 31b, Alternative Dispute Resolution Act, and Title 78 Chapter 31c, Utah](#)
200 [Uniform Mediation Act.](#) Time spent reading the required materials may not count
201 towards the required number of hours of training and can be completed by participants
202 at times when the training program is not being conducted. Trainers shall incorporate in
203 this program some method of ensuring that the required readings are completed.

204 (4)(A)(i)(d) Ethics Training. Training programs shall review with participants Rule 104
205 Code of Ethics for ADR Providers. In addition, ethics shall be woven throughout the
206 program.

207 (4)(A)(ii) Training Methodology:

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

211 (4)(A)(ii)(b) Mediation Demonstration. All training programs shall present a role play
212 mediation simulation (either live or by video) prior to the participant's role play
213 experience as the mediator.

214 (4)(A)(iii) Trainer Qualifications. Training programs shall employ a primary trainer
215 who meets the applicable qualifications of a primary trainer and who have been

216 approved by the Office. In order to be approved as a primary trainer, a trainer must
217 demonstrate the following qualifications:

218 (4)(A)(iii)(a) Successful completion of a minimum of ~~30~~40 hours of mediation
219 training.

220 (4)(A)(iii)(b) Participation in a minimum of ~~200~~300 hours of mediation acting as the
221 mediator.

222 (4)(A)(iii)(c) Completion of 6 hours of continuing mediator education in the last year.

223 (4)(A)(iii)(d) Primary trainers are approved for a three (3) year period.

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

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

232 (4)(B) The Administrative Office shall prepare a videotape demonstrating the use of
233 ADR and the application of this rule and the URCADR to the ADR program. The
234 videotape shall include information as to the differences between mediation and
235 arbitration, and the different procedures and the different effects of an award between
236 nonbinding and binding arbitration. Sufficient copies of the videotape shall be available
237 for use as required by paragraph (6)(A)(i) of this rule, and for the purchase or rental by
238 members of the Bar and other persons interested in the ADR program.

239 (5) Referral of civil actions pending on January 1, 1995. Any party may file a motion
240 that the case or any unresolved or specified issues therein be referred to the ADR
241 program. If the motion is granted, the matter shall proceed pursuant to the URCADR.

242 (6) Referral of civil actions filed after January 1, 1995.

243 (6)(A) All cases subject to this rule shall be referred to the ADR program, pursuant to
244 this rule and URCADR, upon the filing of a responsive pleading unless the parties have
245 participated in a collaborative law process. The matter will proceed to mediation 30 days
246 after the filing of the responsive pleading unless one of the following occurs:

247 (6)(A)(i) One or more parties file with the clerk a statement asking the court to defer
248 ADR consideration until a later date. The statement shall be signed by both counsel and
249 the party and shall state that counsel and the party have reviewed the ADR videotape
250 and have discussed proceeding under the ADR program, but have determined that
251 participation in ADR should be deferred. If participation in the ADR program is deferred
252 in a divorce, paternity or annulment action, the case shall proceed to mediation within
253 90 days of the filing of an answer unless good cause is shown why mediation should not
254 occur. If participation in the ADR program is deferred in other cases, the court and
255 parties are required to address the usefulness of mediation or arbitration in resolving the
256 case no later than the first pretrial conference. In no event shall this superseded a trial
257 judge's ability to proceed with a trial on a date certain.

258 (6)(A)(ii) All parties file with the clerk a written agreement signed by counsel and the
259 parties to submit the case to nonbinding arbitration pursuant to URCADR Rule 102.

260 (6)(A)(iii) All the parties file with the clerk a written agreement signed by counsel and
261 the parties to submit the case to binding arbitration pursuant to Chapter 31a of Title 78
262 or the Federal Arbitration Act, 9 USC § 1 et seq., or as otherwise provided by law.

263 (6)(B) At the time a complaint is filed, the clerk shall provide to the party filing the
264 complaint a notice stating the requirements and options set forth in the preceding
265 subparagraphs. The notice shall include directions for obtaining a copy of the videotape.
266 The party shall serve a copy of the notice on the other parties.

267 (6)(C) If no response has been filed under (6)(A)(i), (ii) or (iii) within 30 days after the
268 responsive pleading is filed, the action shall be stayed pending compliance with
269 URCADR rules applicable to mediation.

270 (6)(D) If the parties have timely filed an agreement to submit the case to nonbinding
271 arbitration under URCADR Rule 102, the court shall issue an order staying the action
272 and all discovery under the Utah Rules of Civil Procedure, except that discovery may
273 continue under URCADR Rule 102(e). All subsequent proceedings shall be conducted
274 in accordance with URCADR Rule 102 and such timetable as the court may establish to
275 ensure the arbitration is instituted and completed without undue delay or expense. All
276 timelines shall be tolled during the pendency of the ADR proceedings, and the timelines
277 shall resume upon notification to the court of the final conclusion of ADR proceedings.

278 (7) At any time:

279 (7)(A) the court, on its own motion, may refer the action or any issues therein to the
280 ADR program.

281 (7)(B) upon its own motion, or for good cause shown upon motion by a party, the
282 court may order that an action that has been referred to the ADR program be withdrawn
283 from the ADR program and restored to the trial calendar.

284 (7)(C) a party, believing that continuing in mediation is no longer productive, may
285 terminate participation and shall notify the other party and mediator.

286 (8) If a party unilaterally terminates a nonbinding arbitration procedure after the
287 hearing has begun, that party shall be responsible for all of the ADR provider's fee, and
288 any other party may move that the court also award reasonable attorney fees against
289 the terminating party unless the terminating party shows good cause for the termination.

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

292 (10) Notice requirements.

293 (10)(A) Any time the parties determine to use mediation or arbitration in the
294 resolution of the case, the plaintiff shall notify the court and specify the expected date
295 for completion of the ADR process.

296 (10)(B) Upon conclusion of an ADR process, the plaintiff shall notify the court of the
297 outcome of the ADR process on a form provided by the court.

298 (11) Selection of ADR provider(s).

299 (11)(A) Upon referral of a case or any issues therein to the ADR program, the
300 Director shall provide the parties with a copy of the roster, and the parties shall choose
301 the ADR provider(s) for the case. If mediation is the selected ADR process, one
302 mediator shall be selected. If arbitration is the selected ADR process, one arbitrator
303 shall be selected, unless the parties stipulate to or the court orders the use of a panel of
304 three arbitrators. If a panel is used, the Director shall, from the panel selected,
305 designate a chair who shall preside at all arbitration proceedings.

306 (11)(B) The parties may select:

307 (11)(B)(i) An ADR provider from the roster; or

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

311 (11)(C) If the parties are unable to select a provider within 15 days of referral of the
312 case to the ADR program, the parties shall return the list to the Director with the names
313 of up to half of the members of the roster stricken. If there are more than two parties,
314 each party shall be permitted to strike a proportion of names equal to or less than its
315 proportion of the number of the parties. The Director shall select the provider(s) from
316 among those providers not stricken by any party. If the parties do not return the list
317 within 15 days or express no preference, the Director shall make the selection. The
318 Director shall mail notice of the selection to all parties and the selected ADR provider.

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

325 (11)(E) If the parties choose to utilize mediation or non-binding arbitration, the
326 parties shall contact the ADR provider directly for services.

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

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

337 (14) No ADR provider may be required to testify as to any aspect of an ADR
338 proceeding except as to any claim of violation of URCADR Rule 104 which raises a

339 substantial question as to the impartiality of the ADR provider and the conduct of the
340 ADR proceeding involved.

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

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

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