Rule 4-510. Alternative dispute resolution.

Intent:

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

Applicability:

This rule does not apply to~~:~~ the following actions: ~~brought by or through the Office of Recovery Services under~~

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

(2) Title 62A, Chapter 11, Recovery Services~~,~~; ~~Title 78, Chapter 45, Uniform Civil Liability for Support Act, and Title 78, Chapter 45a, Uniform Act on Paternity, or to; actions brought under Chapters 3a, 6, 36, and 45c of Title 78, Chapter 6 of Title 30,~~

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

(4) Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer;

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

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

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

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

(9) ~~Chapter 12 of~~ Title 62A, Chapter 15, Substance Abuse and Mental Health Act;~~Chapter 20a of Title 77,~~

(10) Rules ~~64 and~~ 65A, 65B and 65C of the Utah Rules of Civil Procedure~~,~~;

(11) temporary orders requested under Title 30, Husband and Wife~~, or to~~;

(12) uncontested matters brought under:

(12)(A) Title 42, Chapter 1 ~~of Title 42~~, Change of Name;

(12)(B) Title 75, Utah Uniform Probate Code; ~~and Chapters 22a, 30 and 41 of Title 78; or~~

(12)(D) Title 78B, Chapter 5, Part 3, Foreign Judgment Act;

(12)(E) Title 78B, Chapter 6, Part 1, Adoption; or

(13) actions pursued by an assignee of a claim.

This rule applies in the district court. Paragraph (6) applies only in judicial districts 2, 3 and 4.

Statement of the Rule:

(1) Definitions.

(1)(A) "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.

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

(1)(C) "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.

(1)(D) “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.

(1)(E) “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.

(1)(F) "Director" means the Director of Dispute Resolution Programs.

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

(1)(H) “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.”

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

(1)(J) “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.

(1)(K) "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.

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

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

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

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

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

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

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

(3) Qualification of providers.

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

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

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

(3)(A)(i)(b) 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;

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

(3)(A)(i)(d) 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;

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

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

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

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

(3)(B)(i) 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;

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

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

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

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

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

(3)(E) 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.

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

(3)(F)(i) 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;

(3)(F)(ii) 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

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

(3)(G) To be recertified 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.

(3)(H) To be recertified 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.

(3)(I) 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. Private sanctions may include singly or with other sanctions:

(3)(I)(i) admonition;

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

Public sanctions may include singly or with other sanctions:

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

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

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

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

(3)(J) 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.

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

(4)(A) 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. 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:

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

(4)(A)(i)(a) 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.

(4)(A)(i)(b) 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)(A)(i)(c) Readings. All training programs must provide the participants with copies of Rule 4-510 UCJA, Rule 104 (the ethical code), ~~Title 78, Chapter 31b,~~ Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, and ~~Title 78 Chapter 31c,~~ 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.

(4)(A)(i)(d) 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.

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

(4)(A)(ii)(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.

(4)(A)(ii)(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.

(4)(A)(iii) 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:

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

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

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

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

(4)(A)(iii)(e) 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.

(4)(A)(iv) 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.

(4)(B) The Administrative Office shall prepare a videotape demonstrating the use of ADR and the application of this rule and the URCADR to the ADR program. The

videotape shall include information as to the differences between mediation and arbitration, and the different procedures and the different effects of an award between nonbinding and binding arbitration. Sufficient copies of the videotape shall be available for use as required by paragraph (6)(A)(i) of this rule, and for the purchase or rental by members of the Bar and other persons interested in the ADR program.

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

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

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

(6)(A)(i) One or more parties file with the clerk a statement asking the court to defer ADR consideration until a later date. The statement shall be signed by both counsel and the party and shall state that counsel and the party have reviewed the ADR videotape and have discussed proceeding under the ADR program, but have determined that participation in ADR should be deferred. If participation in the ADR program is deferred, the court and parties are required to address the usefulness of mediation or arbitration in resolving the case no later than the first pretrial conference. In no event shall this supersede a trial judge's ability to proceed with a trial on a date certain.

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

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

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

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

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

(7) At any time:

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

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

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

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

(9) 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.

(10) Notice requirements.

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

(10)(B) 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.

(11) Selection of ADR provider(s).

(11)(A) Upon referral of a case or any issues therein to the ADR program, the Director shall provide the parties with a copy of the roster, and 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. If a panel is used, the Director shall, from the panel selected, designate a chair who shall preside at all arbitration proceedings.

(11)(B) The parties may select:

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

(11)(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.

(11)(C) If the parties are unable to select a provider within 15 days of referral of the case to the ADR program, the parties shall return the list 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. If the parties do not return the list within 15 days or express no preference, the Director shall make the selection. The Director shall mail notice of the selection to all parties and the selected ADR provider.

(11)(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.

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

(12) 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.

(13) 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.

(14) 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.

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

(16) 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.