

1 Rule 4-510.05. Referral of civil actions.

2 Intent:

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

4 Applicability:

5 This rule applies in the district court.

6 Statement of the Rule:

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

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

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

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

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

25 ~~(6)(A)(iii) All the parties file with the clerk a written agreement signed by counsel and~~
26 ~~the parties to submit the case to binding arbitration as provided by law.~~

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

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

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

42 ~~(7) At any time:~~

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

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

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

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

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

56 (1) General Provisions.

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

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

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

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

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

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

72 (2) Non-binding arbitration.

73 (2)(A) If the parties have timely filed an agreement to submit the case to non-binding
74 arbitration under URCADR Rule 102, the action is stayed and the timelines of the Rules
75 of Civil Procedure are tolled, except that discovery may continue under URCADR Rule
76 102(e). All subsequent proceedings shall be conducted in accordance with URCADR
77 Rule 102 and a timetable established by the court to ensure the arbitration is completed
78 without undue delay. The timelines of the Rules of Civil Procedure resume when the
79 court is notified of the conclusion of ADR proceedings.

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

84 ~~(10)(3) Notice requirements.~~

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

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

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

92 ~~(11)(4)~~ Selection of ADR provider(s).

93 ~~(11)(A)(4)(A)~~ Upon referral of a case or any issues therein to the ADR program, ~~the~~
94 ~~Director shall provide the parties with a copy of the roster, and~~ the parties shall choose
95 the ADR provider(s) for the case. If mediation is the selected ADR process, one
96 mediator shall be selected. If arbitration is the selected ADR process, one arbitrator
97 shall be selected, unless the parties stipulate to or the court orders the use of a panel of
98 three arbitrators. ~~If a panel is used, the Director shall, from the panel selected,~~
99 ~~designate a chair who shall preside at all arbitration proceedings.~~

100 ~~(11)(B)(4)(B)~~ The parties may select:

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

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

105 ~~(11)(C)(4)(C)~~ If the parties are unable to select a provider ~~within 15 days of referral~~
106 ~~of the case to the ADR program~~, the parties shall return the list a copy of the court roster
107 to the Director with the names of up to half of the members of the roster stricken. If
108 there are more than two parties, each party shall be permitted to strike a proportion of
109 names equal to or less than its proportion of the number of the parties. The Director
110 shall select the provider(s) from among those providers not stricken by any party. ~~If the~~
111 ~~parties do not return the list within 15 days or express no preference, the Director shall~~
112 ~~make the selection.~~ The Director shall mail notice of the selection to all parties and the
113 selected ADR provider.

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

120 ~~(11)(E) If the parties choose to utilize mediation or non-binding arbitration, the (4)(E)~~
121 The parties shall contact the ADR provider directly for services.

122 ~~(12)~~(5) The fees of the ADR provider shall be paid in advance and divided equally
123 between or among the parties unless otherwise provided by the court or agreed by the
124 parties. Any party may petition the court for a waiver of all or part of the fees so
125 allocated on a showing of impecuniosity or other compelling reason. If such waiver is
126 granted, the party shall contact the Director who will appoint a pro bono ADR provider.

127 ~~(13)~~(6) An ADR provider acting as a mediator or arbitrator in cases under the ADR
128 program shall be immune from liability to the same extent as judges of this state, except
129 for such sanctions the judge having jurisdiction of the case may impose for a violation of
130 URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR
131 provider and the conduct of the ADR proceeding involved.

132 ~~(14)~~(7) No ADR provider may be required to testify as to any aspect of an ADR
133 proceeding except as to any claim of violation of URCADR Rule 104 which raises a
134 substantial question as to the impartiality of the ADR provider and the conduct of the
135 ADR proceeding involved.

136 ~~(15)~~(8) All ADR providers providing services pursuant to the ADR program shall be
137 subject to this rule and the URCADR.

138 ~~(16)~~(9) Location of ADR Proceedings. Unless otherwise agreed upon by all the
139 parties, all ADR proceedings shall be held at the office of the ADR provider or such
140 other place designated by the ADR provider.

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