

1 **Rule 101. Conduct of mediation proceedings.**

2 (a) Selection of mediator. The mediator shall be selected as provided in Code of
3 Judicial Administration Rule 4-510(11).

4 (b) Pre-mediation conference. Within 10 days following selection, and after
5 consultation with the participating parties or their counsel, the mediator shall conduct a
6 pre-mediation conference and schedule the place, date and time of the mediation
7 conference. The pre-mediation conference may be conducted by telephone, with the
8 parties individually, or together. During the pre-mediation conference, the mediator shall
9 inform the parties of their right to withdraw from the mediation process before a final
10 settlement agreement is signed. The mediation conference should be held within 45
11 days of the pre-mediation conference. The parties may agree to conduct discovery
12 pursuant to paragraph (f). The mediator may request that the parties exchange and/or
13 submit a disclosure statement prior to the mediation conference.

14 (c) Mediation conference. The mediation conference shall commence at the place,
15 date, and time agreed upon by the mediator and the parties. All parties who have
16 agreed to, or who have been ordered to participate in, the mediation shall be present,
17 ~~shall be prepared to discuss, and shall have the authority to fully settle, all relevant~~
18 ~~issues in the case~~ and shall remain until the mediation is terminated as provided in
19 subpart (g) of this rule. The mediator shall conduct the mediation conference and
20 determine the length and timing of sessions and recesses, and the order and manner of
21 presentation of the issues. The mediation conference should proceed in a fashion that
22 furthers the goals of the mediation process, preserves confidentiality, and encourages
23 candor on the part of participating parties. The mediator should serve as a neutral
24 facilitator, assisting the parties in defining and narrowing the issues and encouraging
25 each party to examine the dispute from various perspectives, without undertaking to
26 decide any issue, make findings of fact, or impose any agreement.

27 (d) Separate consultation with parties during the mediation conference. During the
28 mediation conference, the mediator may meet or consult separately with one or more
29 participating parties, or may divide the conference into groups of fewer than all the
30 parties. Information disclosed to the mediator on a confidential basis during separate

31 consultation shall not be disclosed to other parties without the disclosing party's
32 consent.

33 (e) Settlement. In the event that a settlement to all issues is reached during the
34 mediation conference, the participating parties or the mediator shall prepare, and the
35 parties shall execute, a written settlement agreement and promptly file with the clerk of
36 the court any documents appropriate for resolution of the action. In the event that a
37 resolution of less than all of the issues is reached, the parties shall prepare and execute
38 a stipulation concerning those issues that were resolved and identifying those issues
39 that remain in dispute. Upon filing of the stipulation with the clerk, the case shall be
40 withdrawn from the ADR program.

41 (f) Discovery. Discovery may proceed during the pendency of the mediation
42 proceedings, except as stipulated by the parties. Subpoenas for the production of
43 evidence by nonparties may be issued, served and enforced by the court as provided by
44 the Utah Rules of Civil Procedure.

45 (g) Termination. If the mediator determines that the parties are unable to participate
46 meaningfully in the process or that a reasonable agreement is unlikely to be achieved,
47 the mediator may suspend or terminate the mediation process without explanation. ~~The~~
48 ~~parties~~Any party may terminate the proceedings at any time.

49 (h) Absent parties. Upon written recommendation by the mediator or motion by any
50 party, the court may order absent parties to show cause why they failed to attend the
51 mediation conference and, if appropriate, why sanctions should not be imposed.
52 Attendance at a mediation as provided in subpart (c) of this rule by counsel and parties
53 shall constitute participation in good faith.

54 (i) Change to arbitration. At any time prior to the conclusion of the mediation
55 proceedings, the parties may agree to submit the matter to arbitration. Written notice
56 signed by all parties and counsel of such agreement shall be sent to the Director.
57 Selection of an arbitrator shall be governed by Code of Judicial Administration Rule 4-
58 510(11). The parties may by agreement request that the mediator serve as an arbitrator.

59 (j) No interlocutory appeal. may be taken from an order granting or denying a motion
60 to refer a civil action pending on January 1, 1995 to the ADR program.

61